



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 24 अगस्त, 2021 / 02 भाद्रपद, 1943

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 23rd July, 2021

No. Shram (A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer,

Labour Court, Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh.

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	561/16	Birbal Singh	E. E. HPPWD, Nurpur & other	10-04-2021
2.	783/16	Dharo Ram	-do-	10-04-2021
3.	818/16	Janak Singh	-do-	10-04-2021
4.	14/17	Joginder Singh	-do-	10-04-2021
5.	334/14	Kumari Sanju	D.F.O. Keylong	16-04-2021
6.	51/20	Vinod Nishad	M.D. M/s Inox Wind, Una, H.P.	17-04-2021
7.	610/15	Vijay Kumar	Chairman/M.O. RKS, Barsar	19-04-2021
8.	611/15	Kamaljeet Singh	-do-	19-04-2021
9.	232/15	Abhey Ram	M.D. Lahoul Potato Growers Manali	23-04-2021
10.	264/15	Rajan Sharama	-do-	23-04-2021
11.	660/16	Kashmir Singh	SE HPPWD, Mandi & Others	29-04-2021
12.	658/16	Munshi Ram	-do-	29-04-2021
13.	671/16	Ishwar Dass	-do-	29-04-2021
14.	661/16	Manohar Lal	-do-	29-04-2021
15.	669/16	Gulab Chand	-do-	29-04-2021

By order,

RAM SUBHAG SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant

: Sh. Birbal Singh s/o Sh. Chiru Ram, r/o Village Thana, P.O. Gurchal, Tehsil Nurpur, District Kangra, H.P.

Respondent(s) : (i) The Executive Engineer, HPPWD, Division, Nurpur,
District Kangra, H.P.

(ii) The Executive Engineer, HPPWD Division, Jawali,
District Kangra, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 561/2016

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the separate statements of Shri Mukul Vaid, advocate for the petitioner recorded on 30-3-2021 and today before the Bench of National Lok Adalat, which are placed on record, the present reference/claim petition is hereby withdrawn as compromised. In view of the reference/petition having been withdrawn, the application under Order 22 Rules 3 & 9 of the Code of Civil Procedure becomes infructuous and which is accordingly dismissed as being infructuous. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any paid by any of them shall be refunded.

Petitioner : Sh. Mukul Vaid, Adv.

Respondent : Sh. Anil Sharma, Dy. D.A.

Judicial Officer

Member

Date: 10-04-2021

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Dharo Ram s/o Sh. Bhagat Ram, r/o Village and P.O.
Aundh, Tehsil Nurpur, District Kangra, H.P.

Respondent(s) : (i) The Executive Engineer, HPPWD, Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.

(ii) The Executive Engineer, HPPWD Division, Jawali, Tehsil Nurpur, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 783/2016

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the separate statements of Shri Mukul Vaid, advocate for the petitioner recorded on 30-3-2021 and today before the Bench of National Lok Adalat, which are placed on record, the present reference/claim petition is hereby withdrawn as compromised. In view of the reference/petition having been withdrawn, the application under Order 22 Rules 3 & 9 of the Code of Civil Procedure becomes infructuous and which is accordingly dismissed as being infructuous. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any paid by any of them shall be refunded.

Petitioner : Sh. Mukul Vaid, Adv.

Respondent : Sh. Anil Sharma, Dy. D.A.

Judicial Officer

Member

Date: 10-04-2021

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Janak Singh s/o Sh. Dharam, r/o Vill and P.O. Hatli Jamuwalan, Tehsil Nurpur, District Kangra, H.P.

Respondent(s) : (i) The Executive Engineer, Nurpur Division, HPPWD, Nurpur, District Kangra, H.P.

(ii) The Executive Engineer, Jawali Division, HPPWD, Jawali, District Kangra, H.P.

Number of proceedings of the Labour Court-cum-Industrial Tribunal, Dharamshala : 818/2016

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the separate statements of Shri Mukul Vaid, advocate for the petitioner recorded on 09-4-2021 and today before the Bench of National Lok Adalat, which are placed on record, the present reference/claim petition is hereby withdrawn as compromised. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. Mukul Vaid, Adv.

Respondent : Sh. Anil Sharma, Dy. D.A.

Judicial Officer

Member

Date: 10-04-2021

BEFORE THE NATIONAL LOK ADALAT HELD AT DHARAMSHALA

[Organized by Labour Court-cum-Industrial Tribunal, Dharamshala under Section 19, of Legal Services Authorities Act, 1987 (Central Act)]

Applicant : Sh. Joginder Singh s/o Sh. Hari Singh, r/o Vill. Lunder, P.O. Khel, Tehsil Nurpur, District Kangra, H.P.

Respondent(s) : (i) The Executive Engineer, HPPWD, Division, Nurpur, District Kangra, H.P.

(ii) The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

Number of proceedings of the
Labour Court-cum-Industrial
Tribunal, Dharamshala : 14/2017

Present:—

Name of Judicial Officer : Sh. Yogesh Jaswal

Name of Member : Sh. B.S. Pathania

AWARD

The dispute between the parties having been referred for determination to the National Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

In view of the separate statements of Shri Mukul Vaid, advocate for the petitioner recorded on 01-4-2021 and today before the Bench of National Lok Adalat, which are placed on record, the present reference/claim petition is hereby withdrawn as compromised. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

The parties are informed that the Court fee, if any, paid by any of them shall be refunded.

Petitioner : Sh. Mukul Vaid, Adv.

Respondent : Sh. Anil Sharma, Dy. D.A.

Judicial Officer

Member

Date: 10-04-2021

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 334/2014

Date of Institution : 05-11-2014

Date of Decision : 16-04-2021

Kumari Sanju d/o Sh. Neel Chand, r/o Village Chokhang, P.O. Thiroth, Tehsil Udaipur,
District Lahaul & Spiti, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Lahaul & Spiti at Keylong, District Lahaul & Spiti, H.P.

. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Kumari Sanju d/o Sh. Neel Chand, r/o Village-Chokhang, P.O. Thiro, Tehsil Udaipur, Distt. Lahaul & Spiti *w.e.f.* 01-8-2012 by the Divisional Forest Officer, Lahaul & Spiti at Keylong, Distt. Lahaul & Spiti, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that she was appointed as a daily waged helper by the respondent in the Forest Development Agency, Keylong on 12-7-2006 and had worked as such upto November, 2009. Thereafter, she was transferred to Forest Development Agency, Jhalma and had worked there from December, 2009 till November, 2011. She was again transferred back to DFO office Keylong as DDP Record Keeper and had worked as such upto 31-7-2012. Her services had wrongly and illegally been terminated by the respondent *w.e.f.* 01-8-2012. She had completed 240 days in the preceding twelve calendar months prior to her termination. While terminating her services, the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) have been violated by the respondent. No one month’s prior notice or pay in lieu thereof had ever been given to her. No seniority list had been prepared by the respondent prior to the termination of her services. Many juniors to her have been allowed to continue, whereas the services of the petitioner have been terminated/retrenched. New/fresh hands have also been engaged in place of the petitioner. Sufficient work and funds were available in the department and the petitioner had been engaged in the work of permanent nature. The respondent has not paid wages to the petitioner from December, 2008 upto July, 2012, amounting to Rs.1,60,483/-. The petitioner had visited the respondent’s office time and again for her re-engagement, but without success. At the time of her termination she was getting Rs. 5,022/- per month. She is not gainfully employed after her illegal termination. Hence, the petition for her re-engagement along-with other consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a casual labourer to facilitate the work of Forest Development Agency (FDA) and she had worked intermittently *w.e.f.* December, 2006 upto November, 2008. After that she had worked as a casual labourer intermittently in Desert Development Project (DDP) *w.e.f.* 21-11-2011 to May, 2012. It was denied that she had been transferred to Forest Development Agency (FDA), Jhalama and that she had worked there from December, 2009 upto November, 2011. She had never worked with the respondent from December, 2009 to November, 2011. It was also denied that she had worked with the respondent upto 31-7-2012. It was specifically denied that the services of the petitioner were illegally dispensed with by the respondent *w.e.f.* 1-8-2012. Further, it was denied that she had worked continuously *w.e.f.* 12-7-2006 to 31-7-2012 and had completed 240 days in each calendar year. It was denied that juniors to her had been retained. No fresh workman had been engaged in place of the petitioner. It was asserted that as neither any junior had been engaged nor retained by the

respondent, so there was no violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. The petitioner was not engaged in work of permanent nature. It was asserted that the petitioner had worked intermittently in Forest Development Agency (FDA) which was a project funded by "National Afforestation Programme": A Participatory Approach To Sustainable Development of Forests" (Central Sponsored Scheme). Since the petitioner had not worked with the respondent for a period mentioned in para 6 of the claim petition, she is not entitled to any amount as alleged. The petitioner was not illegally terminated by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 09-12-2015:

1. Whether termination of the services of the petitioner *w.e.f.* 1-8-2012 by the respondent is/was illegal and unjustified as alleged . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Yes

Relief. : Petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Kumari Sanju examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/Z4.

In the cross-examination, she admitted that there is seasonal work in the forest department. She also admitted that she had worked from December, 2006 upto November, 2008 in the Forest Development Agency. She denied that during this period she had worked intermittently. Volunteered that, she had worked regularly. She also denied that she had worked intermittently from November, 2011 to May, 2012 in the Desert Development Project. Self stated that she had worked in the forest department and was being paid the salary through DDP. Further, she denied that she was never transferred from FDA to DDP. She also denied that she had never worked after November, 2011. She feigned ignorance that FDA and DDP were centrally sponsored schemes. She denied that she had not completed 240 days or more. Further, she denied that no juniors to her were engaged by the department. After July, 2021, she is working as an agriculturist.

11. Conversely, Shri Jai Ram Thakur, Divisional Forest Officer, Forest Division, Keylong (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that as per Ex.RW1/G, the petitioner had worked from July, 2006 upto May, 2012 in the forest department. Volunteered that, she had worked in FDA and DDP programmes. He denied that the department was giving salary to the petitioner. He admitted that seniority list Ex.RW1/E has been issued by the department. Further, he admitted that in the years 2007, 2008, 2009, 2011, 2012 and 2015, daily waged workers were engaged. He admitted that all the workers are still working in the department. He also admitted that the petitioner was kept at work as a daily wagger. Volunteered that, she was kept in the project. He further admitted that persons junior to the petitioner are still working in the department. He also admitted that the department is having sufficient funds. Further, he admitted that the Deputy Commissioner had directed DFO Keylong to engage the petitioner. He feigned ignorance that the BDO office Keylong had refused to engage the petitioner. He specifically denied that the petitioner had been disengaged by the department on 1-8-2012.

12. Ex. RW1/B is the copy of guidelines of “National Afforestation Programme”: A Participatory Approach to Sustainable Development of Forests (Central Sponsored Scheme).

13. Ex.RW1/C is the copy of guidelines for Hariyali (2003).

14. Ex.RW1/D is the copy of minutes of meeting of Project Implementing Agencies (PLA's) of Lahul Block under Desert Development Programme (DDA) dated 6th June, 2012.

15. Ex.RW1/E is the copy of seniority list of daily wagger works in Lahaul Forest Division as on 16-5-2017.

16. Ex.RW1/F is the copy of letter dated 10-7-2012 regarding relieving of Class-IV daily wages staff engaged under DDP by Divisional Forest Officer, Keylong.

17. Ex.RW1/G is the copy of mandays chart relating to the petitioner.

18. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

19. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as a casual labourer to facilitate the work of Forest Development Agency and Desert Development Project. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence mandays chart of the petitioner as Ex.RW1/G. It shows that the petitioner had worked in the Forest Development Agency Project *w.e.f.* 12-7-2006 to November, 2008 and in the Desert Development Project *w.e.f.* 21-11-2011 to May, 2012. The respondent has also tendered in evidence copy of seniority list of daily waged workers in Lahaul Forest Division, as it stood on 16.5.2017 as Ex.RW1/E. The name of the petitioner does not figure in this seniority lists anywhere. No reason has been assigned by the petitioner as to why her name does not figure in the seniority list of daily paid workers maintained by the respondent. There is no grain of evidence on record to show that any objection was ever raised by her for her name not being there in the seniority list. No explanation is also forthcoming from her mouth as to why she did not agitate the matter at the earliest and had challenged the seniority list. It was vociferously argued by the learned Deputy District Attorney for the respondent that the seniority list contains the names of all the daily waged workers working with the respondent. The petitioner clearly admitted while under cross-examination that from September, 2006 till November, 2008 she had worked in the Forest Development Agency. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. The petitioner has not filed any of her muster rolls with the petition. This only goes to show that she had never been engaged on the muster roll. Further, the payment records Ex.PW1/D to Ex.PW1/Z1, which have been proved and exhibited on record by the petitioner herself, also nowhere reflect that the petitioner was a daily paid worker. She had signed the documents, being the bills, which only indicate that the petitioner had worked in the projects on bill basis in the years 2006, 2007, 2008, 2011 and 2012. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged in the year 2006 as a daily paid worker. In view of the admission made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

20. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2006 upto July, 2012, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in her name. No muster roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. However, the number of minimum requisite days specified for the tribal area of Lahaul Division in Lahaul & Spiti District is 160 days. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 160 days in a calendar year, her submission in this regard is negated. In case titled as Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367, it has been laid down by the Hon'ble Apex Court that the filing of an affidavit is only his own statement in his favour and it cannot be regarded as sufficient evidence for any Court or Tribunal to come to a conclusion that a workman had, infact, worked for

240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

21. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that she had not challenged or objected to the seniority list, which did not show her name as a daily paid worker. Faced with the situation, it was contended for the petitioner that the respondent (RW1) has categorically admitted the petitioner to have been engaged as a daily waged worker. This admission as per the learned counsel for the petitioner is best piece of evidence and the fact admitted need not be proved. This cannot be accepted. The stray admission made by the respondent will not come to the rescue of the petitioner. It is often said and rightly too that the men may tell lies, but the documents do not. It is basic law that the documentary evidence as compared to the oral evidence has to be given weight. At the cost of reiteration, as per the mandays chart the petitioner is shown to have worked in the projects *i.e.* Forest Development Agency Project *w.e.f.* 12th July, 2006 to November, 2008 and Desert Development Project *w.e.f.* 21st November, 2011 to May, 2012. The copies of bills indicate that the petitioner had worked in the projects on bill basis. Therefore, the petitioner is not a daily paid worker. But, having worked on bill basis in the projects, she is not entitled to any relief as claimed for by her.

22. The petitioner as per her pleadings and oral evidence has claimed arrear of wages *w.e.f.* December, 2008 to July, 2012 amounting to Rs.1,60,483/-. However, Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. The Hon'ble Supreme Court in case titled as Globe Ground India Employees Union vs. Lufthansa German Airlines and Anr., 2019 (161) FLR 927 has held that the Industrial Court has to confine its adjudication to the point of reference and matters incidental thereto only. No reference has been received from the appropriate Government regarding the alleged arrears. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

23. Hence, both these issues are answered in the negative and decided against the petitioner.

Issue No. 3 :

24. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is answered in the affirmative and decided in favour of the respondent.

Relief :

25. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 16th day of April, 2021.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 51/2020
Date of Institution : 02-3-2020
Date of Decision : 17-04-2021

S/Shri Vinod Nishad, Ashish Kumar, Amit Kumar, Rajeshwar Sharma, Vikram Singh, Vinod Sharma, Surjit Singh, Viney Singh, Chander Shekhar, Rajesh Kumar, Om Pal and others workers M/s Inox Wind Limited, Plot No.1, Khasra No. 264 to 267, Industrial Area, Village and Post Office Basal, Tehsil & District Una, H.P. . *Petitioners.*

Versus

The Managing Director, M/s Inox Wind Limited, Plot No.1, Khasra No. 264 to 267, Industrial Area, Village and Post Office Basal, Tehsil & District Una, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vinod Kumar (Petitioner No. 1 in person)
For the Respondent : Sh. Surinder Sharma, Assistant Manager, (HR)

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the demand raised by S/Shri Vinod Nishad, Ashish Kumar, Amit Kumar, Rajeshwar Sharama, Vikram Singh, Vinod Sharma, Surjit Singh, Viney Singh, Chander Shekhar, Rajesh Kumar, Om Pal and others workers M/s Inox Wind Limited, Plot No.1, Khasra No.264 to 267, Industrial Area, Village and Post Office Basal, Tehsil & District Una, H.P. before the Managing Director, M/s Inox Wind Limited, Plot No.1, Khasra No.264 to 267, Industrial Area, Village and Post Office Basal, Tehsil & District Una, H.P. *vide* demand notice dated 08-05-2019 regarding stoppage of annual increment without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If yes, what amount of financial, other service benefits the above workers are entitled to as per demand notice dated 08-05-2019 (copy enclosed) from the above employer/Management?”

2. The case is listed for appearance of the petitioners but, however, Shri Vinod Nishad (petitioner No.1) has made the below given statement in the Court today:—

“ब्यान किया कि मुझे अन्य वादीगण द्वारा आज ब्यान देने के लिए अधिकृत किया गया है। हमारा प्रतिवादी के साथ समझौता हो गया है। अतः हम इस केस को आगे न चलाना चाहते हैं। इसे दाखिल दफ्तर किया जावे।”

RO&AC
Sd/-

PJ
Sd/-

3. In view of the above statement, this reference is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of April, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 610/2015

Date of Institution : 19-12-2015

Date of Decision : 19-4-2021

Shri Vijay Kumar s/o Shri Jagdish Chand, r/o Village Dehra, P.O. Hatwar, Tehsil Ghumarwin, District Bilaspur, H.P. . *Petitioner.*

Versus

The Chairman-cum-President-cum-Medical Officer, Rogi Kalyan Samiti, Civil Hospital Barsar, District Hamirpur, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vijay Kumar s/o Shri Jagdish Chand, r/o Village Dehra, P.O. Hatwar, Tehsil Ghumarwin, District Bilaspur, H.P. *w.e.f.* 11-08-2013 (as alleged by workman) by the Chairman-cum-President-cum-Medical Officer, Rogi Kalyan Samiti, Civil Hospital Barsar, District Hamirpur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged on daily waged basis by the respondent *w.e.f.* 20-6-2012. He had worked under Senior Medical Officer/Block Medical Officer at Civil Hospital Barsar upto 10-8-2013. No appointment letter had been issued nor any terms and conditions were settled. During his service, payment was being made to him by Rogi Kalyan Samiti. His services were unlawfully terminated by the respondent *w.e.f.* 11-8-2013 without prior notice. He had completed 240 days from the date of his initial engagement till the date of his termination. His services could not have been terminated without prior notice or payment in lieu thereof, as provided under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). His act and conduct was upto the mark and to the satisfaction of the respondent. No show cause notice had been issued nor he had ever been charge-sheeted. At the time of his engagement in Civil Hospital Barsar, he had worked with class-IV regular workers, namely Shri Bhagwan Dass and Shri Satpal as well as with Shri Amar Singh a daily wager. The act of the respondent was highly unjustified, arbitrary, unconstitutional, contrary and against the mandatory provisions of the Act. Hence, the present petition for re-engagement of the petitioner with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. It was asserted that Rogi Kalyan Samiti is an independent body governed by its guidelines. In the annual meeting of the governing body of the Rogi Kalyan Samiti, Barsar on 28-4-2012 under the Chairmanship of Sub Divisional Magistrate (Civil), Barsar, District Hamirpur, it was resolved to carry out construction work, repair of hospital attached buildings, residences and cleanliness of hospital premises at local level and the budget was provided under Annual Maintenance Grant, seed money, untied funds and user charges heads. The Rogi Kalyan Samiti receives funds under different heads from the Government under NRHM (now NHM) every year and the wages are not to be paid from such funds. Wages are to be paid only from the user charges. The petitioner had been engaged on 3-9-2012 and he had worked intermittently with the respondent upto July, 2013. It was specifically denied that the petitioner had been engaged on daily waged basis by the respondent. His services had never been terminated on 11-8-2013 by the respondent, rather he had worked only upto 31-7-2013. He had never completed 240 days in the preceding twelve calendar months and had never fulfilled the criteria of Section 25-B of the Act. There was no need to serve him a notice under Section 25-F of the Act. Sh. Satpal had never worked with the respondent. The workers, namely, Shri Bhagwan Dass and Shri Amar Singh (Class-IV) were senior to the petitioner. The petitioner had not been engaged for regular work. He had been engaged on different dates for different works and under different heads, as per annual meetings of Rogi Kalyan Samiti held on 28-4-2012 and 31-5-2013. The petitioner is gainfully employed as an agriculturist. It is, thus, prayed that the claim petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18-10-2016:

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 11-08-2103 is/was illegal and unjustified as alleged? . . .*OPP.*

2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Oral arguments of the learned counsel/Authorized Representative for the petitioner and the learned Deputy District Attorney for respondent heard and records gone through. Written arguments filed by both the parties have also been gone through by me.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Affirmative

Relief. : Petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vijay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B to Ex. PW1/D.

In the cross-examination, he feigned ignorance that Rogi Kalyan Samiti is an independent unit, having separate guidelines. He denied that he was not engaged by the respondent on 20-6-2012. He also denied that he had not regularly worked upto 10-8-2013. He further denied that he was being paid the wages through user charges. He categorically denied that he was engaged on 3.9.2012 and had worked intermittently till July, 2013. Volunteered that, he had worked continuously from June, 2012 upto 10-8-2013. He specifically denied that Shri Satpal had never worked. He further denied that Shri Bhagwan Dass and Shri Amar Singh were senior to him. He admitted that he earns his livelihood by doing agricultural works.

11. Conversely, Dr. Het Ram Kalia, Block Medical Officer, Civil Hospital, Barsar, District Hamirpur, H.P. testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he admitted that the petitioner was engaged as a daily wager by the respondent on 20-6-2012. Volunteered that, the working details of the petitioner is Ex. RW1/B.

He admitted that at the time of engagement, no appointment letter had been issued to the petitioner, nor any terms and conditions had been settled. He further admitted that the petitioner had worked under the supervision of BMO and other staff of the hospital. He also admitted that the petitioner had worked in the government hospital. It was also admitted by him that for any recruitment the approval of the Finance Department is a must. He specifically denied the petitioner had been removed from work on 11-8-2013 without serving any notice. Self stated that on the completion of work the services of the petitioner were not required.

12. Ex. RW1/B and Ex. RW1/G are copies of details of works relating to the petitioner.

13. Ex. RW1/C is the copy of letter dated 14th October, 2010 regarding financial guidelines for utilization of Annual Maintenance Grant.

14. Ex. RW1/D is the copy of office order dated 9th September, 2010 issued by National Rural Health Mission Health and Family Welfare Department, Himachal Pradesh.

15. Ex. RW1/E is the copy of guidelines for the Rogi Kalyan Samiti in Government Health Institutions of Himachal Pradesh.

16. Ex. RW1/F is the copy of extract of meeting of Governing Body of Rogi Kalyan Samiti FRU, Barsar dated 28-4-2012.

17. Ex. RW1/H and Ex. RW1/J are the copies of bills relating to Shri Bhagwan Dass.

18. Ex. RW1/K is the copy of office order dated 25th May, 2000 relating to Shri Amar Singh and two others.

19. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

20. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had been engaged on different dates to do different available works under different heads, as per the annual meetings of the Governing Body of Rogi Kalyan Samiti held on 28-4-2012 and 3-5-2013 respectively. Therefore, in view of the aforesaid binding precedent the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent.

21. Copy of guidelines for the Rogi Kalyan Samiti in Government Health Institutions of Himachal Pradesh is there on the file as Ex. RW1/E. Chapter-VIII of such guidelines deals with the staff policy. Under this Chapter recruitment of two types of employees can be made under Rogi Kalyan Samiti, i.e. Grant-in-Aid funded and RKS own resources funded. The employees recruited under GIA funds provided by the State Government are to be governed by draft contracts formulated by the State Government from time to time for each category of employees and specific

approval is to be accorded by the Government for the recruitment. The mode of selection, terms and conditions, consolidated salary payable, eligibility criteria and other conditions of services are also to be decided by the Government by approving the draft contract. As per the guidelines to RKS own resources (Fresh Recruitment), the decision regarding engagement of fresh contractual employees has to be taken with care and at the highest level *i.e.* Governing Body and State Government. No fresh recruitment can be made by any RKS contrary to the principles and guidelines set-forth by the State Government for employees under “GIA funded” and “RKS own resources funded” respectively. There can also be no recruitment on daily wages or on contract basis by any RKS for the services that stand outsourced. A specific scheme has been set-forth in Chapter-VIII of the guidelines for the recruitment of the employees to be recruited under GIA funded as well as by RKS from its own resources. It is nowhere the pleaded case of the petitioner nor any grain of evidence has been led on record by him to the effect that after going through the recruitment process, as detailed in Chapter-VIII of the guidelines, he had been recruited either under GIA funds or RKS own resources and that he had ever entered into any contract agreement with the respondent/Rogi Kalyan Samiti, Barsar. Rather, it is the own admitted case of the petitioner that no appointment letter had ever been issued nor any terms and conditions had been settled. This knocks the very bottom of his case set up in the claim petition, as there could not have been any recruitment by the Rogi Kalyan Samiti, Barsar contrary to the principles and guidelines set-forth by the State Government for employees under “GIA funded” and “RKS own resources funded” respectively. Then, it was itself suggested to the respondent (RW1) by the petitioner that there cannot be any recruitment except for the prior approval from the Finance Department. He admitted the suggestion. Admission of this suggestion of the petitioner by the respondent leaves no doubt in mind that the petitioner admitted that the recruitment could have been there only as per the guidelines for the Rogi Kalyan Samiti.

22. Much was also argued orally and in the written arguments by the petitioner about the admission made by the respondent (RW1) in his cross-examination that the petitioner had been engaged as a daily wager on 20-6-2012. I have perused the so called admission made by the respondent. To my mind, it appears to be a stray admission made by the respondent and it will be a sheer travesty of justice if this is made the basis to accept the claim of the petitioner. Placed on record by the respondent is the copy of annual meeting of the Governing Body of Rogi Kalyan Samiti FRU, Barsar dated 28-4-2012 as Ex.RW1/F. It shows that the Governing Body in such meeting had resolved that repair of the hospital, attached building and the residences be got done and that the hospital premises be also got cleaned. As per the respondent, for the execution of such works only the respondent had been engaged and the details of his works stand placed on record as Ex.RW1/B (also Ex.RW1/G). A perusal of this document reveals that the petitioner had only carried out the works regarding the cutting of bushes surrounding the hospital premises for 08 days, 15 days and 21 days respectively, for doing the paint work at USG and BMO room for 07 days and for the construction of shelves and digging of pits etc. for about 22 days. This would also negate the case of the petitioner that he had been engaged by the respondent as a daily wager.

23. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. Even otherwise, if it is assumed for the sake of arguments that the petitioner was a daily waged worker with the respondent, it was required of him to have established on record that he had worked for 240 days or more in a year preceding twelve calendar months from the date of his alleged termination.

24. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is

on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

25. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 11-8-2013. From the details of works with respect to the petitioner, which is there on the file as Ex.RW1/B (also Ex.RW1/G), it becomes abundantly clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date of his retrenchment *i.e.* 11-8-2013 as envisaged under Section 25-B of the Act. So is also gathered from the copy of register muster roll (attendance) placed on record by the petitioner himself as Ex.PW1/D. Therefore, also the provisions of Section 25-F of the Act are not attracted in this case.

26. It is not the case of the petitioner that at the time of his termination any person junior to him was retained in service by the respondent. It is also not his case that after his disengagement new/fresh hands have been engaged by the respondent. Therefore, the provisions of Sections 25-G and 25-H of the Act are not attracted in this case as well.

27. In all fairness, the learned counsel/Authorized Representative for the petitioner has placed reliance upon cases titled as M/s Classic Bottle Caps (P) Ltd. vs. Usha Singh & Ors. 2012 LLR 738; Management of Tamil Nadu State Transport Corporation (Madurai Division-1) Ltd. Madurai vs. Presiding Officer, Labour Court, Madurai & Anr. 2016 LLR 736; Manorama Verma (Smt) versus State of Bihar and Ors. 1995 SCC (L&S) 193; Pradhan Bajinath Tea Estate Mazdoor Sangh vs. State of Himachal Pradesh and Ors. 2019 LLR 1239; The Principal, Government I.T.I., Kollegal-571440 vs. R. Hema Kumar and Anr. 2016 LLR 360 and Sudarshan Rajpoot vs. U.P. State Road Transport Corporation 2015 LLR 95. I have carefully gone through the aforesaid case law cited by the learned counsel/Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

28. Hence, both these issues are answered in the negative and decided against the petitioner.

Issue No. 3 :

29. Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is answered in the affirmative and decided in favour of the respondent.

Relief :

30. As a sequel to my findings on the various issues above, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of April, 2021.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 611/2015
Date of Institution : 19-12-2015
Date of Decision : 19-4-2021

Shri Kamaljeet Singh s/o Shri Sarwan Kumar, r/o V.P.O. Khagal, Tehsil & District Hamirpur, H.P. . *Petitioner.*

Versus

The Chairman-cum-President-cum-Medical Officer, Rogi Kalyan Samiti, Civil Hospital Barsar, District Hamirpur, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kamaljeet Singh s/o Sh. Sarwan Kumar, r/o V.P.O. Khagal, Tehsil & District Hamirpur, H.P. *w.e.f.* 11-08-2013 (as alleged by workman) by the Chairman-cum-President-cum-Medical Officer, Rogi Kalyan Samiti, Civil Hospital Barsar, District Hamirpur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged on daily waged basis by the respondent *w.e.f.* 20-6-2012. He had worked under Senior Medical Officer/Block Medical Officer at Civil Hospital Barsar upto 10-8-2013. No appointment letter had been issued nor any terms and conditions were settled. During his service, payment was being made to him by Rogi Kalyan Samiti. His services were unlawfully terminated by the respondent *w.e.f.* 11-8-2013 without prior notice. He had completed 240 days from the date of his initial engagement till the date of his termination. His services could not have been terminated

without prior notice or payment in lieu thereof, as provided under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). His act and conduct was upto the mark and to the satisfaction of the respondent. No show cause notice had been issued nor he had ever been charge-sheeted. At the time of his engagement in Civil Hospital Barsar, he had worked with Class-IV regular workers, namely Shri Bhagwan Dass and Shri Satpal as well as with Shri Amar Singh a daily wager. The act of the respondent was highly unjustified, arbitrary, unconstitutional, contrary and against the mandatory provisions of the Act. Hence, the present petition for re-engagement of the petitioner with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. It was asserted that Rogi Kalyan Samiti is an independent body governed by its guidelines. In the annual meeting of the governing body of the Rogi Kalyan Samiti, Barsar on 28-4-2012 under the Chairmanship of Sub Divisional Magistrate (Civil), Barsar, District Hamirpur, it was resolved to carry out construction work, repair of hospital attached buildings, residences and cleanliness of hospital premises at local level and the budget was provided under Annual Maintenance Grant, seed money, untied funds and user charges heads. The Rogi Kalyan Samiti receives funds under different heads from the Government under NRHM (now NHM) every year and the wages are not to be paid from such funds. Wages are to be paid only from the user charges. The petitioner had been engaged on 3-9-2012 and he had worked intermittently with the respondent upto July, 2013. It was specifically denied that the petitioner had been engaged on daily waged basis by the respondent. His services had never been terminated on 11-8-2013 by the respondent, rather he had worked only upto 31-7-2013. He had never completed 240 days in the preceding twelve calendar months and had never fulfilled the criteria of Section 25-B of the Act. There was no need to serve him a notice under Section 25-F of the Act. Sh. Satpal had never worked with the respondent. The workers, namely, Shri Bhagwan Dass and Shri Amar Singh (Class-IV) were senior to the petitioner. The petitioner had not been engaged for regular work. He had been engaged on different dates for different works and under different heads, as per annual meetings of Rogi Kalyan Samiti held on 28-4-2012 and 31-5-2013. The petitioner is gainfully employed as an agriculturist. It is, thus, prayed that the claim petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 18-10-2016:

1. Whether termination of services of the petitioner by the respondents *w.e.f.* 11-08-2103 is/was illegal and unjustified as alleged? . . .*OPP.*

2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*

3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Oral arguments of the learned counsel/Authorized Representative for the petitioner and the learned Deputy District Attorney for respondent heard and records gone through. Written arguments filed by both the parties have also been gone through by me.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Affirmative

Relief. : Petition dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kamaljeet Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B to Ex. PW1/D.

In the cross-examination, he feigned ignorance that Rogi Kalyan Samiti is an independent unit, having separate guidelines. He denied that he was not engaged by the respondent on 20-6-2012. He also denied that he had not regularly worked upto 10-8-2013. He further denied that he was being paid the wages through user charges. He categorically denied that he was engaged on 3-9-2012 and had worked intermittently till July, 2013. Volunteered that, he had worked continuously from June, 2012 upto 10.8.2013. He specifically denied that Shri Satpal had never worked. He further denied that Shri Bhagwan Dass and Shri Amar Singh were senior to him. He admitted that he earns his livelihood by doing agricultural works.

11. Conversely, Dr. Het Ram Kalia, Block Medical Officer, Civil Hospital, Barsar, District Hamirpur, H.P. testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he admitted that the petitioner was engaged as a daily wager by the respondent on 20-6-2012. Volunteered that, the working details of the petitioner is Ex.RW1/B. He admitted that at the time of engagement, no appointment letter had been issued to the petitioner, nor any terms and conditions had been settled. He further admitted that the petitioner had worked under the supervision of BMO and other staff of the hospital. He also admitted that the petitioner had worked in the government hospital. It was also admitted by him that for any recruitment the approval of the Finance Department is a must. He specifically denied the petitioner had been removed from work on 11-8-2013 without serving any notice. Self stated that on the completion of work the services of the petitioner were not required.

12. Ex. RW1/B and Ex.RW1/G are copies of details of works relating to the petitioner.

13. Ex.RW1/C is the copy of letter dated 14th October, 2010 regarding financial guidelines for utilization of Annual Maintenance Grant.

14. Ex.RW1/D is the copy of office order dated 9th September, 2010 issued by National Rural Health Mission Health and Family Welfare Department, Himachal Pradesh.

15. Ex.RW1/E is the copy of guidelines for the Rogi Kalyan Samiti in Government Health Institutions of Himachal Pradesh.

16. Ex.RW1/F is the copy of extract of meeting of Governing Body of Rogi Kalyan Samiti FRU, Barsar dated 28-4-2012.

17. Ex.RW1/H and Ex.RW1/J are the copies of bills relating to Shri Bhagwan Dass.

18. Ex.RW1/K is the copy of office order dated 25th May, 2000 relating to Shri Amar Singh and two others.

19. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

20. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had been engaged on different dates to do different available works under different heads, as per the annual meetings of the Governing Body of Rogi Kalyan Samiti held on 28-4-2012 and 3-5-2013 respectively. Therefore, in view of the aforesaid binding precedent the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent.

21. Copy of guidelines for the Rogi Kalyan Samiti in Government Health Institutions of Himachal Pradesh is there on the file as Ex.RW1/E. Chapter-VIII of such guidelines deals with the staff policy. Under this Chapter recruitment of two types of employees can be made under Rogi Kalyan Samiti, *i.e.* Grant-in-Aid funded and RKS own resources funded. The employees recruited under GIA funds provided by the State Government are to be governed by draft contracts formulated by the State Government from time to time for each category of employees and specific approval is to be accorded by the Government for the recruitment. The mode of selection, terms and conditions, consolidated salary payable, eligibility criteria and other conditions of services are also to be decided by the Government by approving the draft contract. As per the guidelines to RKS own resources (Fresh Recruitment), the decision regarding engagement of fresh contractual employees has to be taken with care and at the highest level *i.e.* Governing Body and State Government. No fresh recruitment can be made by any RKS contrary to the principles and guidelines set-forth by the State Government for employees under "GIA funded" and "RKS own resources funded" respectively. There can also be no recruitment on daily wages or on contract basis by any RKS for the services that stand outsourced. A specific scheme has been set-forth in Chapter-VIII of the guidelines for the recruitment of the employees to be recruited under GIA funded as well as by RKS from its own resources. It is nowhere the pleaded case of the petitioner nor any grain of evidence has been led on record by him to the effect that after going through the recruitment process, as detailed in Chapter-VIII of the guidelines, he had been recruited either under GIA funds or RKS own resources and that he had ever entered into any contract agreement with the respondent/Rogi Kalyan Samiti, Barsar. Rather, it is the own admitted case of the petitioner that no appointment letter had ever been issued nor any terms and conditions had been

settled. This knocks the very bottom of his case set up in the claim petition, as there could not have been any recruitment by the Rogi Kalyan Samiti, Barsar contrary to the principles and guidelines set-forth by the State Government for employees under “GIA funded” and “RKS own resources funded” respectively. Then, it was itself suggested to the respondent (RW1) by the petitioner that there cannot be any recruitment except for the prior approval from the Finance Department. He admitted the suggestion. Admission of this suggestion of the petitioner by the respondent leaves no doubt in mind that the petitioner admitted that the recruitment could have been there only as per the guidelines for the Rogi Kalyan Samiti.

22. Much was also argued orally and in the written arguments by the petitioner about the admission made by the respondent (RW1) in his cross-examination that the petitioner had been engaged as a daily wager on 20-6-2012. I have perused the so called admission made by the respondent. To my mind, it appears to be a stray admission made by the respondent and it will be a sheer travesty of justice if this is made the basis to accept the claim of the petitioner. Placed on record by the respondent is the copy of annual meeting of the Governing Body of Rogi Kalyan Samiti FRU, Barsar dated 28-4-2012 as Ex.RW1/F. It shows that the Governing Body in such meeting had resolved that repair of the hospital, attached building and the residences be got done and that the hospital premises be also got cleaned. As per the respondent, for the execution of such works only the respondent had been engaged and the details of his works stand placed on record as Ex.RW1/B and Ex.RW1/G. A perusal of Ex.RW1/B reveals that the petitioner had only carried out the works regarding the cutting of bushes surrounding the hospital premises for 08 days and 22 days respectively, for doing the work of dismantling the old building near doctors’ new residence for 12 days, for doing the paint work at USG and BMO room for 07 days and for the construction of shelves and digging of pits etc. for about 25 days. As per Ex.RW1/G the petitioner had carried out the works regarding the cutting of bushes surrounding the hospital premises for 08 days, 15 days and 22 days respectively, for doing the work of dismantling the old building near the doctor’s new residence for 12 days, for construction of boundary wall work in front of doctor’s residence for 19 days, for doing the paint work at USG and BMO room for 07 days and for the construction of shelves and digging of pits etc. for 25 days. These documents would also negate the case of the petitioner that he had been engaged by the respondent as a daily wager.

23. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondent, therefore, the provisions of Section 25-F of the Act are not attracted in this case. Even otherwise, if it is assumed for the sake of arguments that the petitioner was a daily waged worker with the respondent, it was required of him to have established on record that he had worked for 240 days or more in a year preceding twelve calendar months from the date of his alleged termination.

24. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

25. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 11-8-2013. From the details of works with respect to the

petitioner, which is there on the file as Ex.RW1/B (also Ex.RW1/G), it becomes abundantly clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date of his retrenchment *i.e.* 11-8-2013 as envisaged under Section 25-B of the Act. So is also gathered from the copy of register muster roll (attendance) placed on record by the petitioner himself as Ex.PW1/D. Therefore, also the provisions of Section 25-F of the Act are not attracted in this case.

26. It is not the case of the petitioner that at the time of his termination any person junior to him was retained in service by the respondent. It is also not his case that after his disengagement new/fresh hands have been engaged by the respondent. Therefore, the provisions of Sections 25-G and 25-H of the Act are not attracted in this case as well.

27. In all fairness, the learned counsel/Authorized Representative for the petitioner has placed reliance upon cases titled as M/s Classic Bottle Caps (P) Ltd. vs. Usha Singh & Ors. 2012 LLR 738; Management of Tamil Nadu State Transport Corporation (Madurai Division-1) Ltd. Madurai vs. Presiding Officer, Labour Court, Madurai & Anr. 2016 LLR 736; Manorama Verma (Smt) versus State of Bihar and Ors. 1995 SCC (L&S) 193; Pradhan Bajinath Tea Estate Mazdoor Sangh vs. State of Himachal Pradesh and Ors. 2019 LLR 1239; The Principal, Government I.T.I. Kollegal-571440 vs. R. Hema Kumar and Anr. 2016 LLR 360 and Sudarshan Rajpoot vs. U.P. State Road Transport Corporation 2015 LLR 95. I have carefully gone through the aforesaid case law cited by the learned counsel/Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

28. Hence, both these issues are answered in the negative and decided against the petitioner.

Issue No. 3 :

29 Taking into account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is answered in the affirmative and decided in favour of the respondent.

Relief :

30. As a sequel to my findings on the various issues above, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of April, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 232/2015

Date of Institution : 09-6-2015

Date of Decision : 23-4-2021

Shri Abhey Ram s/o Shri Ishru Ram, r/o Village Bhosh, P.O. Haripur, Tehsil Manali, District Kullu, H.P. . *Petitioner.*

Versus

The Managing Director, The Lahoul Potato Growers Coop-Marketing-cum-Processing Society Limited, Manali, District Kullu, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Rajat Chaudhary, Adv.

For the Respondent : Sh. Arvind Kapoor, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Abhey Ram s/o Shri Ishru Ram, r/o Village Bhosh, P.O. Haripur, Tehsil Manali, District Kullu, H.P. by the Managing Director, The Lahoul Potato Growers Coop-Marketing-cum-Processing Society Limited, Manali, District Kullu, H.P. *vide* letter dated 19-07-2013 (Copy enclosed) on the basis of domestic inquiry and without affording adequate/sufficient opportunities in the domestic enquiry, as alleged by the worker, is proper and justified? If not, what relief of consequential benefits, amount of back compensation the above aggrieved worker is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged as a clerk on daily waged basis by the respondent *w.e.f.* 01-8-1995 against the vacant post of clerk. He had continuously worked in the said post upto 21-4-1999. During this period, he was being given one or two days break after every three months. However, he had been completing 240 days during the aforesaid period. His services along-with those of nine other workmen were orally terminated on 22-4-1999 by the management. An industrial dispute was raised against the management by the petitioner and Reference No. 65/2007 was decided in his favour by this Court on 29-11-2010. As per the Award passed in the aforesaid reference, the petitioner was re-engaged by the management on 1-4-2011. He was also paid Rs. 25,000/- as compensation. Thereafter, he had continued to work upto 26-5-2011 to the satisfaction of the management. He was transferred by the respondent from Manali to Karga, where he had joined his duty in the month of June, 2011. But, he was again transferred from Karga to 15 Miles (Kullu) on 11-10-2011. He had joined the duty there on 11-11-2011. He was again transferred back to Karga by the respondent on 5-6-2012. He then had submitted a representation dated 7-6-2012 to the respondent with a request to cancel

his transfer due to his family problem. His request was not accepted and an explanation of his was called for. He responded to the explanation by filing a reply. However, on 14-6-2012 vide a letter he was informed by the respondent that his reply was not satisfactory and he had been asked to join at Karga within two days. But before the expiry of two days, he was suspended on 5-6-2012 by the respondent. He thereafter was charge-sheeted on 25-6-2012. Regular employees working with the respondent were never transferred from Manali to Karga. He had only been transferred to victimize/harass him on account of union activities. Assistant Registrar, Coop Societies was appointed as an inquiry officer by the respondent. He could not have been appointed as an inquiry officer, being against the rules of the society as well as against the Model Standing Order Act, 1946. At the time of inquiry no list of witnesses were provided nor any presenting officer had appeared on behalf of the respondent before the inquiry officer. The inquiry was held only for a day and the report was submitted to the respondent. The charges leveled against the petitioner were not proved. The petitioner is an office bearer of union *i.e.* LPS Dainik Wetan Bhogi Karamchari Sangh and the union had already raised a general demand charter before the respondent vide demand notice dated 11-6-2012. During the pendency of such industrial dispute before the labour authorities, the respondent had passed the dismissal order of the petitioner on 19-7-2013. Such act of the respondent is against the principles of natural justice. At the time of termination of the services of the petitioner the respondent had not paid one month pay in lieu of the notice period to the petitioner and had also not obtained permission from the labour authorities under Section 33-2(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The act of the respondent to time and again transfer the petitioner from one place to another amounted to unfair labour practice. The act of the respondent to terminate the petitioner is unjustified, arbitrary, illegal, unconstitutional and against the mandatory provisions of the Act. Hence, the present petition for setting aside and quashing the termination order dated 19-7-2013 and for issuing directions for the re-engagement of the petitioner along-with back wages and all other consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, cause of action, estoppel, jurisdiction and that the petition is bad for non-joinder and mis-joinder of parties. The contents of the petition were denied on merits. However, the working of the petitioner with the respondent was admitted. It was specifically denied that the petitioner had completed 240 days or more. The petitioner had not worked to the satisfaction of the management. He was found to be guilty of misconduct and other irregularities during his service. Only after a proper investigation as per the norms and principles of natural justice, the petitioner had been dismissed. The petitioner had been transferred in a routine manner and as per the requirements. The workmen are transferred in public interest due to administrative exigencies, work load and also in the interest of the society. The personal interest of the worker is not above the interest of the society, for which every employee, whether regular or daily wage works. An employee cannot be allowed to serve as per his choice. The regular employees are also transferred as per the exigency and needs of the society. Whatever action had been taken, it was taken within the four corners of law. No objection had been raised nor any appeal/revision had been preferred by the petitioner against any order. Full opportunities had been afforded to the petitioner at the time of inquiry conducted against him. Whatever action was taken was as per the principles of natural justice and as per law. The alleged union being unregistered and unrecognized, was having no legal value. Maximum demands raised by the employees had been accepted. The petitioner had been found guilty of willful absence from duty, misconduct, disobedience and negligence. He had also misappropriated the money of the society. Recovery proceedings are pending against him before the Collector. By denying the other allegations, it has been prayed by the respondent that the petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 29-3-2016:

1. Whether termination of services of petitioner by the respondent *vide* letter dated 19-07-2013 is/was illegal and unjustified as alleged? . .*OPP*.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . .*OPR*.
4. Whether claim petition is bad for mis-joinder of necessary party as alleged? . .*OPR*.
5. Whether the petitioner has no cause of action to file the present case as alleged? . .*OPR*.
6. Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? . .*OPR*.
7. Whether this Court has no jurisdiction to entertain the present claim as alleged? . .*OPR*.
8. Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

8. Oral arguments of the learned counsel/Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through. Written arguments filed by both the parties have also been gone through by me.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Re-engagement with seniority and continuity in service from the date of his illegal termination with 50% back wages.

Issue No. 3 : Negative

Issue No. 4 : Negative

Issue No. 5 : Negative

Issue No. 6 : Negative

Issue No. 7 : Negative

Issue No. 8 (Relief) : Petition allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged clerk and he had worked as such upto 21-4-1999. Admittedly, the services of the petitioner were earlier terminated by the respondent orally on dated 22-4-1999, which was set aside by this Court *vide* Award dated November 29, 2010 passed in Reference No. 65/2007, titled as *Shri Abhey Ram vs. The Managing Director, M/s Lahoul Potato Growers Co-operative Marketing-cum-Processing Society Ltd., Manali, District Kullu, H.P. and another*. The operative part of the Award of this Court is reproduced below in verbatim for ready reference:

“The termination of the petitioner is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He is entitled to continuity and seniority in service from the date of his illegal termination. The petitioner is also entitled to Rs. 25,000/- as lump sum compensation in lieu of back wages. The reference is answered in the following terms”.

11. There is no denial of the fact that pursuant to the Award dated 29-11-2010, copy of which is placed on record as Ex.RW1/F, passed by this Court, the services of the petitioner were re-engaged and he was also paid Rs. 25,000/- as compensation. The parties are not at variance that the services of the petitioner again came to be terminated on 19-7-2013 *vide* letter dated 19-7-2013 (Ex.R20).

12. Per the respondent the action was initiated against the petitioner in pursuance to a disciplinary inquiry ordered against the petitioner for act of misconduct. As a sequel thereto an inquiry had been ordered against the petitioner. Per the respondent initially a show cause notice was issued to the petitioner and thereupon an office memorandum *vide* Ex.R15 along-with articles of charge had been initiated against the petitioner. A proper inquiry was initiated thereto and an inquiry report Ex.R17 had been submitted by the Inquiry Officer. The respondent contends that due opportunity was granted to the petitioner and he had participated in the inquiry proceedings and consequently the Inquiry Officer had submitted his report. On examination of the available record submitted along-with the inquiry report, it had been established that the petitioner was guilty of misconduct.

13. On the other hand, it is the case of the petitioner that no proper inquiry had been conducted. Only in one day the inquiry had been conducted and the Inquiry Officer had sent the report to the respondent. The articles of charge leveled against the petitioner were not proved. It is further the case of the petitioner that neither he was heard nor any inquiry report was supplied to him. In support of his case, the petitioner examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit he reiterated the contents of his statement of claim.

14. The respondent examined himself as RW1. Apart from deposing that the employees/workers are transferred from one place to other in the public interest, due to administrative exigencies, work load and in the interest of society, he deposed that the petitioner had also been transferred as per the requirement and in a routine manner. The inquiry proceedings were initiated against the petitioner within the four corners of law. No objection was ever raised nor any appeal had been preferred against any order before the competent authority by the petitioner. Full opportunities had been provided to the petitioner in the inquiry proceedings and the action had been taken against the petitioner as per the principles of natural justice. This witness has, however, conceded that as per the report the allegations were found to be baseless against the petitioner. He was also categorical that the petitioner had performed his duties honestly and that he had completed 240 days in each year.

15. The case of the respondent is that due inquiry had been conducted and thereupon the disciplinary authority had decided to terminate the services of the petitioner.

16. I have carefully perused the inquiry report (Ex.R17). The perusal of the said report shows that the Inquiry Officer infact had not conducted any inquiry worth the name. After the petitioner having put in appearance and on examination of letter dated 14-6-2012 addressed to the petitioner (Ex.R12), the Inquiry Officer finally came to the conclusion that the order dated 15.6.2012 of suspension of the petitioner was biased and not legitimate. It is a cardinal principle of law and by now well settled that the domestic inquiry must conform to the basic requirement of natural justice, and one of the essential requisites of a proceeding of this character is that when the inquiry is over, the Inquiry Officer must consider the evidence and record the conclusion and reasons thereof. The Inquiry Officer need not right a very long or an elaborate report; but, since his findings are likely to lead to dismissal, it is his duty to record clearly and precisely his conclusion and the reasons for reaching to such a conclusion. The reason of following such a procedure is primarily to enable the Court to decide whether the approach adopted by the Inquiry Officer was erroneous or not and whether his conclusion was perverse or not. No such exercise worth the name was conducted by the Inquiry Officer. These basic principles are to be scrupulously followed and have not even been remotely taken care of by the Inquiry Officer. Even otherwise, the Inquiry Officer as per his report had not found the petitioner to be guilty of any misconduct. Strangely, the disciplinary authority had found the petitioner to be guilty of misconduct. How the disciplinary authority came to this conclusion is difficult to fathom.

17. Not only this, the disciplinary authority in its wisdom had decided to terminate the services of the petitioner. Even on the proposed penalty, which admittedly was a major penalty, no show cause was issued to the petitioner. It again was a total non-compliance of the basic principle of natural justice and the statutory requirement of a domestic inquiry. The petitioner has a right to be heard before the imposition of penalty by the disciplinary authority, which has not been complied with by the respondent. It assumes significance because of the fact that the Inquiry Officer has not even returned any findings against the articles of charge on which the inquiry had been initiated. It was merely recorded in the report that the order amounted to favoritism and was not lawful.

18. The learned counsel for the respondent further contends that even if the inquiry was defective, the gravity of the misconduct can be gone into by this Court at this stage. There is no dispute on the aforesaid preposition of law. A person can undoubtedly be terminated for willful absence. However, the termination has to abide by the principles of natural justice, which are an integral part of the procedure *vis-a-vis* a domestic inquiry. In the case on hand, there was in fact no inquiry which was conducted by the Inquiry Officer nor any record had been placed before him. The Inquiry Officer even never thought of deliberating upon the same to come to some conclusion. The Inquiry Officer was to return findings on each article of charge framed against the petitioner. How and under what circumstances the disciplinary authority came to a conclusion to impose a major penalty is not decipherable either from the inquiry report as the Inquiry Officer had not even bothered to refer to the list of documents attached with articles of charge issued to the petitioner to hold that the petitioner was willfully absent from duty, had committed willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior and was also negligent in performing his duty. That apart, as is clear, the said documents were not even placed before the Inquiry Officer as is apparent from his report Ex.R17. In these circumstances how the disciplinary authority came to these conclusions is beyond comprehension.

19. As a sequel to the discussion held hereinabove, it is to be held that no proper inquiry was held by the respondent while terminating the services of the petitioner. In fact no inquiry had been held by the respondent before dispensing with the services of the petitioner. No doubt, sufficiency of evidence in proof of the findings by an Inquiry Officer is beyond the scrutiny of the Courts, but in the present case the inquiry itself was a sham. In fact no inquiry was conducted. The disciplinary authority came to the conclusion on the basis of its own knowledge. Such inquiry is not

sustainable in the eyes of law. It is against all the canons of natural justice. No doubt, the respondent has placed on record the Rules, copy of which is Ex.R1/A, to show as to what are the rules governing the removal from service, but as per the findings arrived at by me above, the findings of the disciplinary authority and the Inquiry Officer are illegal. The same are liable to be quashed and set aside and it is ordered accordingly. The disengagement of the petitioner from the services *w.e.f.* 19-7-2013 is thus held to be improper and unjustified.

20. In the statement of claim it has specifically been asserted by the petitioner that he is not gainfully employed from the date of his illegal termination. In his oral statement by way of affidavit on oath, the petitioner specifically took the stand that he was not gainfully employed since his disengagement. This is sufficient evidence by a workman to prove his “non gainful employment”. In this behalf support can ably be drawn from the judgment of our Hon’ble High Court titled Pradhan Bajinath Tea Estate Majdoor Sangh vs. State of Himachal Pradesh & Ors. (2019 LLR 1239). Therefore, the burden shifted upon the respondent to contradict the statement of the petitioner by leading cogent, ocular or documentary evidence to prove his gainful employment. Strangely enough so has not been done by the respondent. It has neither been pleaded nor proved on record by the respondent that the petitioner was gainfully employed during the period of litigation after his termination. The Hon’ble Supreme Court in Manorma Verma (Smt.) vs. State of Bihar & Ors. 1995 Supreme Court Cases (L&S) 193 has held that once termination is found to be illegal consequential order of grant of back wages must follow unless there are reasons justifying a departure from normal order. The Hon’ble Allahabad High Court in Triveni Engineering and Industries Ltd. vs. State of U.P. and Ors. 2020 LLR 944 has held that the termination of services without holding a fair and proper inquiry is illegal attracting reinstatement with back wages.

21. Strangely, the respondent has raised a plea at the time of arguments that since the engagement of the petitioner dehors the appointment rules and is a back door entry, he is not entitled to any relief. Reliance was placed upon the case titled as Vijay Sood vs. Central University of HP, Dharamshala & Connected Matter 2106 (1) Him L.R. (DB) 457. The aforesaid plea in fact has not been raised in the reply filed by the respondent. It has also not been raised by the Managing Director who has appeared as RW1. Even otherwise, the appointment of the petitioner was on daily waged basis. It had been made after the concurrence of the Board of Directors. The initial engagement, thus, also cannot be said to be in violation of any rule, as none but the Board of Directors had agreed to appoint the petitioner. Since the respondent has failed to prove that the appointment of the petitioner was against the recruitment rules of the society, the ratio laid down our Hon’ble High Court in Vijay Sood’s case (supra) does not come to the rescue of the respondent.

22. A plea was also raised by the respondent that as all the relief(s) claimed in the present petition have already been awarded to the petitioner in an earlier Award dated 27-10-2017, the present petition is not maintainable. This cannot be accepted. Copy of Award dated 27-10-2017 passed in Reference No.157/2017 titled as LPS Dainik Wetan Bhogi Karamchari Sangh, Manali, District Kullu through its President vs. The Managing Director, The Lahoul Potato Growers Coop-Marketing-cum-Processing Society Limited, Manali, District Kullu, H.P. has been placed on record as Ex.R24. Its perusal reveal that the respondent therein had been directed to regularize the services of all the twenty two daily waged workmen of claimant/petitioner/union who had completed ten years of regular service. It was also held that after regularization of the services of the members of claimant-petitioner they shall be entitled to revised pay scales along-with grade pay, dearness allowance and other allowances payable to similarly situated employees of the respondent. It is not disputed that the present petitioner is also a member of the aforesaid union. But, this is a case filed by the petitioner for his illegal termination from service by the respondent vide letter dated 19-7-2013. So, the relief claimed in the present petition by no stretch of imagination can be said to be

similar to that claimed in the earlier reference. Hence, this plea raised by the respondent is also negated.

23. In all fairness, the learned counsel for the respondent has also placed reliance upon cases titled as Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & Ors. AIR 2004 SC 4850 and Mihir Kumar Hazara Chaoudhury vs. Life Insurance Corpn. and Anr. JT2017 (9) SC 24. I have carefully gone through the aforesaid case law cited by the learned counsel for the respondent and I am of the view that for the reasons mentioned hereinabove, the respondent cannot derive any advantage from what has been decided in these cases.

24. Though, the petitioner has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness, but it was humbly submitted by the learned counsel for the respondent at the time of arguments that the financial health of the society these days is dismal. This fact was not opposed by the opposite party. So, I do not think it just and proper to award full back wages to the petitioner. Hence, he is held to be entitled to 50% back wages from the date of his illegal termination till the date of his reinstatement.

25. Hence, issues No. 1 and 2 are answered in the affirmative and are decided in favour of the petitioner while issue No. 3 is answered in the negative and is decided against the respondent.

Issue No.4 :

26. Nothing has been brought to my notice as to how and why the petition is bad for misjoinder of parties. This issue is answered in the negative and is decided against the respondent.

Issue No. 5 :

27. In view of my finds on issues No. 1 and 2 above in the affirmative, it crystal clear that the petitioner does have the cause of action to file and maintain the present petition. Hence, this issue is answered in the negative and is decided against the respondent.

Issue No.6 :

28. No evidence of estoppel has been led by the respondent. Moreover, this issue was not pressed for at the time of arguments by the learned counsel for the respondent. Hence, this issue is answered in the negative and is decided against the respondent.

Issue No. 7 :

29. It was contended for the respondent that this Court has no jurisdiction to try and entertain the petition, as the petitioner was a daily waged employee of the society. This cannot be accepted. It has been laid down by our own Hon'ble High Court in case titled as The Palampur Co-operative Marketing and Consumer Federation Limited vs. State of H.P. and Ors., Latest HLJ 2007 (HP) 713, that the Industrial Tribunal has the authority, power and jurisdiction to entertain and decide the reference made to it with respect to the employees of the Co-operative Societies. Hence, this issue is answered in the negative and is decided against the respondent.

Relief :

30. As a sequel to my findings on issues above, the instant claim petition succeeds and is allowed. The termination of the services of the petitioner by the respondent as per office order/letter dated 19-7-2013 is set aside and quashed. The respondent is directed to reinstate the petitioner

forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination. He shall also be entitled to 50% back wages from the date of his illegal termination till the date of his reinstatement. However, it is made clear that in case the respondent decides to proceed against the petitioner for his insubordination, willful absence, negligence and dereliction of duty, this Award will not come in his way. In such a situation, the respondent will be entitled to proceed with the inquiry and take appropriate action against the petitioner as per law. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the record room.

Announced in the open Court today this 23rd day of April, 2021.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 264/2015
Date of Institution : 27-6-2015
Date of Decision : 23-4-2021

Shri Rajan Sharma s/o Shri Prem Lal, r/o Village and Post Office Kalath, Tehsil Manali,
District Kullu, H.P. . *Petitioner.*

Versus

The Managing Director, The Lahoul Potato Growers Coop-Marketing-cum-Processing
Society Limited, Manali, District Kullu, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N. L. Kaundal, AR
: Sh. Rajat Chaudhary, Adv.
For the Respondent : Sh. Arvind Kapoor, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Rajan Sharma s/o Shri Prem Lal, r/o Village and Post Office Kalath, Tehsil Manali, District Kullu, H.P. by the Managing

Director, The Lahoul Potato Growers Coop-Marketing-cum-Processing Society Limited, Manali, District Kullu, H.P. *vide* letter dated 19-07-2013 (Copy enclosed) on the basis of domestic inquiry and without affording adequate/sufficient opportunities in the domestic enquiry, as alleged by the worker, is proper and justified? If not, what relief of consequential benefits, amount of back compensation the above aggrieved worker is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged as a clerk on daily waged basis by the respondent *w.e.f.* 01-8-1995 against the vacant post of clerk. He had continuously worked in the said post upto 7-8-1999. During this period, he was being given one or two days break after every three months. However, he had been completing 240 days during the aforesaid period. His services along-with those of nine other workmen were orally terminated on 8-8-1999 by the management. An industrial dispute was raised against the management by the petitioner and Reference No. 64/2007 was decided in his favour by this Court on 29-11-2010. As per the Award passed in the aforesaid reference, the petitioner was re-engaged by the management on 1-4-2011. He was also paid Rs.25,000/- as compensation. Thereafter, he had continued to work upto 26-5-2011 to the satisfaction of the management. He was transferred by the respondent from Manali to Karga, where he had joined his duty in the month of June, 2011. But, he was again transferred from Karga to 15 Miles (Kullu) on 11-10-2011. He had joined the duty there on 11-11-2011. He then had submitted a representation to the respondent for reconsideration. His request was not accepted and *vide* letter dated 13-6-2012 he was directed to report on duty at Karga forthwith, failing which disciplinary action would be taken against him. On the very next day *i.e.* 14-6-2012 *vide* a letter he was informed by the respondent that he had disobeyed the orders of office. Sufficient time was not given to the petitioner to comply the orders *vide* letter dated 13-6-2012 and 14-6-2012. He was then suspended *vide* letter dated 18-6-2012. He thereafter was charge-sheeted on 26-6-2012. Regular employees working with the respondent were never transferred from Manali to Karga. He had only been transferred to victimize/harass him on account of union activities. Assistant Registrar, Coop Societies was appointed as an inquiry officer by the respondent. He could not have been appointed as an inquiry officer, being against the rules of the society as well as against the Model Standing Order Act, 1946. At the time of inquiry no list of witnesses were provided nor any presenting officer had appeared on behalf of the respondent before the inquiry officer. The inquiry was held only for a day and the report was submitted to the respondent. The charges leveled against the petitioner were not proved. The petitioner is an office bearer of union *i.e.* LPS Dainik Wetan Bhogi Karamchari Sangh and the union had already raised a general demand charter before the respondent *vide* demand notice dated 11-6-2012. During the pendency of such industrial dispute before the labour authorities, the respondent had passed the dismissal order of the petitioner on 19-7-2013. Such act of the respondent is against the principles of natural justice. At the time of termination of the services of the petitioner the respondent had not paid one month pay in lieu of the notice period to the petitioner and had also not obtained permission from the labour authorities under Section 33-2(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The act of the respondent to time and again transfer the petitioner from one place to another amounted to unfair labour practice. The act of the respondent to terminate the petitioner is unjustified, arbitrary, illegal, unconstitutional and against the mandatory provisions of the Act. Hence, the present petition for setting aside and quashing the termination order dated 19-7-2013 and for issuing directions for the re-engagement of the petitioner along-with back wages and all other consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, cause of action, estoppel, jurisdiction and that the petition is bad for non-joinder and mis-joinder of parties. The contents of the petition were denied on merits. However, the working of the petitioner with the respondent was admitted. It was specifically denied that the petitioner had completed 240 days or more. The petitioner had not worked to the

satisfaction of the management. He was found to be guilty of misconduct and other irregularities during his service. Only after a proper investigation as per the norms and principles of natural justice, the petitioner had been dismissed. The petitioner had been transferred in a routine manner and as per the requirements. The workmen are transferred in public interest due to administrative exigencies, work load and also in the interest of the society. The personal interest of the worker is not above the interest of the society, for which every employee, whether regular or daily wage works. An employee cannot be allowed to serve as per his choice. The regular employees are also transferred as per the exigency and needs of the society. Whatever action had been taken, it was taken within the four corners of law. No objection had been raised nor any appeal/revision had been preferred by the petitioner against any order. Full opportunities had been afforded to the petitioner at the time of inquiry conducted against him. Whatever action was taken was as per the principles of natural justice and as per law. The alleged union being unregistered and unrecognized, was having no legal value. Maximum demands raised by the employees had been accepted. The petitioner had been found guilty of willful absence from duty, misconduct, disobedience and negligence. He had also misappropriated the money of the society. Recovery proceedings are pending against him before the Collector. By denying the other allegations, it has been prayed by the respondent that the petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 29-3-2016:

1. Whether termination of services of petitioner by the respondent *vide* letter dated 19-07-2013 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue No. 1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether claim petition is bad for mis-joinder of necessary party as alleged? . . .*OPR*.
5. Whether the petitioner has no cause of action to file the present case as alleged? . . .*OPR*.
6. Whether the petitioner is estopped from filing claim petition by his act and conduct as alleged. If so, its effect? . . .*OPR*.
7. Whether this Court has no jurisdiction to entertain the present claim as alleged? . . .*OPR*.
8. Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Oral arguments of the learned counsel/Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through. Written arguments filed by both the parties have also been gone through by me.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2	: Re-engagement with seniority and continuity in service from the date of his illegal termination with 50% back wages.
Issue No. 3	: Negative
Issue No. 4	: Negative
Issue No. 5	: Negative
Issue No. 6	: Negative
Issue No. 7	: Negative
Issue No. 8 (Relief)	: Petition allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged clerk and he had worked as such upto 7-8-1999. Admittedly, the services of the petitioner were earlier terminated by the respondent orally on dated 8-8-1999, which was set aside by this Court vide Award dated November 29, 2010 passed in Reference No.64/2007, titled as *Shri Rajan Sharma vs. The Managing Director, M/s Lahoul Potato Growers Co-operative Marketing-cum-Processing Society Ltd., Manali, District Kullu, H.P. and another*. The operative part of the Award of this Court is reproduced below in verbatim for ready reference:

“The termination of the petitioner is set aside and quashed. The respondents are directed to re-engage the petitioner forthwith. He is entitled to continuity and seniority in service from the date of his illegal termination. The petitioner is also entitled to Rs. 25,000/- as lump sum compensation in lieu of back wages. The reference is answered in the following terms”.

11. There is no denial of the fact that pursuant to the Award dated 29-11-2010, copy of which is placed on record as Ex.RW1/F, passed by this Court, the services of the petitioner were re-engaged and he was also paid Rs. 25,000/- as compensation. The parties are not at variance that the services of the petitioner again came to be terminated on 19-7-2013 vide letter dated 19-7-2013 (Ex.R18).

12. Per the respondent the action was initiated against the petitioner in pursuance to a disciplinary inquiry ordered against the petitioner for act of misconduct. As a sequel thereto an inquiry had been ordered against the petitioner. Per the respondent initially a show cause notice was issued to the petitioner and thereupon an office memorandum *vide* Ex.R13 along-with articles of charge had been initiated against the petitioner. A proper inquiry was initiated thereto and an inquiry report Ex.R15 had been submitted by the Inquiry Officer. The respondent contends that due opportunity was granted to the petitioner and he had participated in the inquiry proceedings and consequently the Inquiry Officer had submitted his report. On examination of the available record

submitted along-with the inquiry report, it had been established that the petitioner was guilty of misconduct.

13. On the other hand, it is the case of the petitioner that no proper inquiry had been conducted. Only in one day the inquiry had been conducted and the Inquiry Officer had sent the report to the respondent. The articles of charge leveled against the petitioner were not proved. It is further the case of the petitioner that neither he was heard nor any inquiry report was supplied to him. In support of his case, the petitioner examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit he reiterated the contents of his statement of claim.

14. The respondent examined himself as RW1. Apart from deposing that the employees/workers are transferred from one place to other in the public interest, due to administrative exigencies, work load and in the interest of society, he deposed that the petitioner had also been transferred as per the requirement and in a routine manner. The inquiry proceedings were initiated against the petitioner within the four corners of law. No objection was ever raised nor any appeal had been preferred against any order before the competent authority by the petitioner. Full opportunities had been provided to the petitioner in the inquiry proceedings and the action had been taken against the petitioner as per the principles of natural justice. This witness has, however, conceded that as per the report the allegations were found to be baseless against the petitioner. He was also categorical that the petitioner had performed his duties honestly and that he had completed 240 days in each year.

15. The case of the respondent is that due inquiry had been conducted and thereupon the disciplinary authority had decided to terminate the services of the petitioner.

16. I have carefully perused the inquiry report (Ex.R15). The perusal of the said report shows that the Inquiry Officer in fact had not conducted any inquiry worth the name. It is a cardinal principle of law and by now well settled that the domestic inquiry must conform to the basic requirement of natural justice, and one of the essential requisites of a proceeding of this character is that when the inquiry is over, the Inquiry Officer must consider the evidence and record the conclusion and reasons thereof. The Inquiry Officer need not right a very long or an elaborate report; but, since his findings are likely to lead to dismissal, it is his duty to record clearly and precisely his conclusion and the reasons for reaching to such a conclusion. The reason of following such a procedure is primarily to enable the Court to decide whether the approach adopted by the Inquiry Officer was erroneous or not and whether his conclusion was perverse or not. No such exercise worth the name was conducted by the Inquiry Officer. These basic principles are to be scrupulously followed and have not even been remotely taken care of by the Inquiry Officer. Even otherwise, the Inquiry Officer as per his report had not found the petitioner to be guilty of any misconduct. Strangely, the disciplinary authority had found the petitioner to be guilty of misconduct. How the disciplinary authority came to this conclusion is difficult to fathom.

17. Not only this, the disciplinary authority in its wisdom had decided to terminate the services of the petitioner. Even on the proposed penalty, which admittedly was a major penalty, no show cause was issued to the petitioner. It again was a total non-compliance of the basic principles of natural justice and the statutory requirement of a domestic inquiry. The petitioner has a right to be heard before the imposition of penalty by the disciplinary authority, which has not been complied with by the respondent. It assumes significance because of the fact that the Inquiry Officer has not even returned any findings against the articles of charge on which the inquiry had been initiated.

18. The learned counsel for the respondent further contends that even if the inquiry was defective, the gravity of the misconduct can be gone into by this Court at this stage. There is no dispute on the aforesaid preposition of law. A person can undoubtedly be terminated for willful absence. However, the termination has to abide by the principles of natural justice, which are an integral part of the procedure *vis-a-vis* a domestic inquiry. In the case on hand, there was in fact no inquiry which was conducted by the Inquiry Officer nor any record had been placed before him. The Inquiry Officer even never thought of deliberating upon the same to come to some conclusion. The Inquiry Officer was to return findings on each article of charge framed against the petitioner. How and under what circumstances the disciplinary authority came to a conclusion to impose a major penalty is not decipherable either from the inquiry report as the Inquiry Officer had not even bothered to refer to the list of documents attached with articles of charge issued to the petitioner to hold that the petitioner was willfully absent from duty, had committed willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior and was also negligent in performing his duty. That apart, as is clear, the said documents were not even placed before the Inquiry Officer as is apparent from his report Ex.R15. In these circumstances how the disciplinary authority came to these conclusions is beyond comprehension.

19. As a sequel to the discussion held hereinabove, it is to be held that no proper inquiry was held by the respondent while terminating the services of the petitioner. In fact no inquiry had been held by the respondent before dispensing with the services of the petitioner. No doubt, sufficiency of evidence in proof of the findings by an Inquiry Officer is beyond the scrutiny of the Courts, but in the present case the inquiry itself was a sham. In fact no inquiry was conducted. The disciplinary authority came to the conclusion on the basis of its own knowledge. Such inquiry is not sustainable in the eyes of law. It is against all the canons of natural justice. No doubt, the respondent has placed on record the Rules, copy of which is Ex.R1/A, to show as to what are the rules governing the removal from service, but as per the findings arrived at by me above, the findings of the disciplinary authority and the Inquiry Officer are illegal. The same are liable to be quashed and set aside and it is ordered accordingly. The disengagement of the petitioner from the services *w.e.f.* 19-7-2013 is thus held to be improper and unjustified.

20. In the statement of claim it has specifically been asserted by the petitioner that he is not gainfully employed from the date of his illegal termination. In his oral statement by way of affidavit on oath, the petitioner specifically took the stand that he was not gainfully employed since his disengagement. This is sufficient evidence by a workman to prove his "non gainful employment". In this behalf support can ably be drawn from the judgment of our Hon'ble High Court titled Pradhan Bajinath Tea Estate Majdoor Sangh vs. State of Himachal Pradesh & Ors. (2019 LLR 1239). Therefore, the burden shifted upon the respondent to contradict the statement of the petitioner by leading cogent, ocular or documentary evidence to prove his gainful employment. Strangely enough so has not been done by the respondent. It has neither been pleaded nor proved on record by the respondent that the petitioner was gainfully employed during the period of litigation after his termination. The Hon'ble Supreme Court in Manorma Verma (Smt.) vs. State of Bihar & Ors., 1995 Supreme Court Cases (L&S) 193 has held that once termination is found to be illegal consequential order of grant of back wages must follow unless there are reasons justifying a departure from normal order. The Hon'ble Allahabad High Court in Triveni Engineering and Industries Ltd. vs. State of U.P. and Ors. 2020 LLR 944 has held that the termination of services without holding a fair and proper inquiry is illegal attracting reinstatement with back wages.

21. Strangely, the respondent has raised a plea at the time of arguments that since the engagement of the petitioner de hors the appointment rules and is a back door entry, he is not entitled to any relief. Reliance was placed upon the case titled as Vijay Sood vs. Central University of HP, Dharamshala & Connected Matter 2106 (1) Him L.R. (DB) 457. The aforesaid plea in fact has not been raised in the reply filed by the respondent. It has also not been raised by the Managing

Director who has appeared as RW1. Even otherwise, the appointment of the petitioner was on daily waged basis. It had been made after the concurrence of the Board of Directors. The initial engagement, thus, also cannot be said to be in violation of any rule, as none but the Board of Directors had agreed to appoint the petitioner. Since the respondent has failed to prove that the appointment of the petitioner was against the recruitment rules of the society, the ratio laid by our Hon'ble High Court in Vijay Sood's case (supra) does not come to the rescue of the respondent.

22. A plea was also raised by the respondent that as all the relief(s) claimed in the present petition have already been awarded to the petitioner in an earlier Award dated 27-10-2017, the present petition is not maintainable. This cannot be accepted. Copy of Award dated 27-10-2017 passed in Reference No.157/2017 titled as LPS Dainik Wetan Bhogi Karamchari Sangh, Manali, District Kullu through its President vs. The Managing Director, The Lahoul Potato Growers Coop-Marketing-cum-Processing Society Limited, Manali, District Kullu, H.P. has been placed on record as Ex.R23. Its perusal reveal that the respondent therein had been directed to regularize the services of all the twenty two daily waged workmen of claimant/petitioner/union who had completed ten years of regular service. It was also held that after regularization of the services of the members of claimant-petitioner they shall be entitled to revised pay scales along-with grade pay, dearness allowance and other allowances payable to similarly situated employees of the respondent. It is not disputed that the present petitioner is also a member of the aforesaid union. But, this is a case filed by the petitioner for his illegal termination from service by the respondent *vide* letter dated 19-7-2013. So, the relief claimed in the present petition by no stretch of imagination can be said to be similar to that claimed in the earlier reference. Hence, this plea raised by the respondent is also negated.

23. In all fairness, the learned counsel for the respondent has also placed reliance upon cases titled as Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & Ors. AIR 2004 SC 4850 and Mihir Kumar Hazara Chaoudhury vs. Life Insurance Corpn. and Anr. JT2017 (9) SC 24. I have carefully gone through the aforesaid case law cited by the learned counsel for the respondent and I am of the view that for the reasons mentioned hereinabove, the respondent cannot derive any advantage from what has been decided in these cases.

24. Though, the petitioner has discharged his initial onus of proving that he was not gainfully employed during the period of his forced idleness, but it was humbly submitted by the learned counsel for the respondent at the time of arguments that the financial health of the society these days is dismal. This fact was not opposed by the opposite party. So, I do not think it just and proper to award full back wages to the petitioner. Hence, he is held to be entitled to 50% back wages from the date of his illegal termination till the date of his reinstatement.

25. Hence, issues No. 1 and 2 are answered in the affirmative and are decided in favour of the petitioner while issue No. 3 is answered in the negative and is decided against the respondent.

Issue No. 4 :

26. Nothing has been brought to my notice as to how and why the petition is bad for mis-joinder of parties. This issue is answered in the negative and is decided against the respondent.

Issue No.5 :

27. In view of my finds on issues No. 1 and 2 above in the affirmative, it crystal clear that the petitioner does have the cause of action to file and maintain the present petition. Hence, this issue is answered in the negative and is decided against the respondent.

Issue No.6 :

28. No evidence of estoppel has been led by the respondent. Moreover, this issue was not pressed for at the time of arguments by the learned counsel for the respondent. Hence, this issue is answered in the negative and is decided against the respondent.

Issue No. 7 :

29. It was contended for the respondent that this Court has no jurisdiction to try and entertain the petition, as the petitioner was a daily waged employee of the society. This cannot be accepted. It has been laid down by our own Hon'ble High Court in case titled as The Palampur Co-operative Marketing and Consumer Federation Limited vs. State of H.P. and Ors., Latest HLJ 2007 (HP) 713, that the Industrial Tribunal has the authority, power and jurisdiction to entertain and decide the reference made to it with respect to the employees of the Co-operative Societies. Hence, this issue is answered in the negative and is decided against the respondent.

Relief :

30. As a sequel to my findings on issues above, the instant claim petition succeeds and is allowed. The termination of the services of the petitioner by the respondent as per office order/letter dated 19-7-2013 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination. He shall also be entitled to 50% back wages from the date of his illegal termination till the date of his reinstatement. However, it is made clear that in case the respondent decides to proceed against the petitioner for his insubordination, willful absence, negligence and dereliction of duty, this Award will not come in his way. In such a situation, the respondent will be entitled to proceed with the inquiry and take appropriate action against the petitioner as per law. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the record room.

Announced in the open Court today this 23rd day of April, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 660/2016

Date of Institution : 12-9-2016

Date of Decision : 29-4-2021

Shri Kashmir Singh s/o Shri Jai Singh, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. . .Petitioner.

Versus

1. The Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P.
2. The Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. . .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. S. Sippy, AR

For the Respondent(s) : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Kashmir Singh s/o Shri Jai Singh, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. during February, 1998 by (i) the Superintending Engineer, H.P.P.W.D. 1st Circle, District Mandi, H.P. (ii) the Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. who has worked as beldar on daily wages basis only for 26 and 41 days during the years 1997 and 1998 respectively and has raised his industrial dispute *vide* demand notice dated 10-06-2015 after delay of more than 17 years without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated above and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to the reference the petitioner has averred in the statement of claim that he had worked with respondent No. 1 as a daily waged beldar in the years 1997-1998. His services were orally dispensed with by the respondents on the pretext of lack of funds/budget. However, he was assured that he would be called to work, as and when funds/budget were available. But, he was never called again thereafter. He had approached the respondents time and again for his re-engagement, but without success. No notice had been served upon him nor any retrenchment compensation had been paid. Persons junior to him and also new workers, namely S/Sh. Ramesh Chand, Mehar Singh, Manohar Lal, Karam Singh, Jiwan Lal, Baldev Chand, Duni Chand, Sunil Kumar, Roop Lal, Mast Ram, Kamlesh Kumar, Jagdish Chand, Nand Lal, Ghanshyam, Milap Singh, Balwant Singh, Padam Nath and Tulsi Ram etc. were engaged. In addition to it 411 other junior workers were retained. Fictional breaks were given to him so that he could not complete 240 days in a year. The action of the respondent is stated to be in violation of the provisions of Sections 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). He is unemployed till date. Hence, the petition for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. However, it is asserted that the petitioner had worked intermittently as a daily waged beldar with respondent No. 2 *w.e.f.* December, 1997 to February, 1998. He had only worked for 26 days in the year 1997 and for 41 days in the year 1998. The services of the petitioner had never been terminated by the respondents. He himself had left the work of his own sweet will. It is denied that the petitioner had made oral as well as written requests to the respondents for re-engagement. He had only raised the demand notice in the year 2015, which was responded to by the respondents. Only those workers had been regularized by the department who had completed the requisite criteria for regularization as per the Government policy. It is denied that 411 junior workers had been regularized by the respondents. No fictional breaks had ever been given to the petitioner. He had never completed 240 days in any calendar year. So, there was no need to serve any notice upon him under Section 25-F of the Act.

Since the petitioner had left the job of his own free volition, there is no violation of the provisions of Section 25-G and 25-H of the Act by the respondents. The petitioner is gainfully employed, being an agriculturist. Hence, it is prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 26-6-2018:

1. Whether termination of services of the petitioner by the respondents during February, 1998 is/was legal and justified as alleged? . . .*OPP*.
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned vice counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Lump sum compensation of ₹25,000/-
Issue No. 3	: No
Issue No. 4	: No
Relief	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kashmir Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he had worked for 26 days in the year 1997 for 41 days in the year 1998. He also admitted that he had not worked in the department in the months of November, 1997 and March, 1998. He denied that he had never been disengaged by the department. He also denied that he himself had left the job of his own sweet will. He had given in writing to the department in the years 1999, 2001, 2004, 2006, 2007, 2009, 2011 and 2013 to re-engage him. He was categorical that he cannot produce any document in this regard. He also admitted that he had raised the demand notice in the year 2015. He denied that after the year 1998 he had left the job of his own free volition. He denied that he had not worked for 240 days in any year. However, he admitted that he cannot produce any document to show that he had worked continuously for 240 days in a year. He owns land, which he cultivates. He denied that he was making a phoney statement.

11. Conversely, Shri Vinod Kumar Sharma (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he denied that the petitioner had worked as a daily wager in the years 1997 and 1998. Volunteered that, he had only worked for 26 days in the year 1997 and for 41 days in the year 1998. He specifically denied that the petitioner had completed 240 days in a calendar year. He also denied that fictional breaks were given to the petitioner by the department so that he could not complete 240 days. Further he denied that the petitioner had been disengaged by the department after February, 1998. He clearly denied that thereafter the petitioner orally as well as in writing had requested the department to re-engage him. He admitted that the department had prepared the seniority list of the workers, which is Ex.RW1/C on the file. He also admitted that as per Ex.RW1/C workers, namely, Jagdish Chand, Balwant Singh, Sunil, Nand Lal, Jagdish Chand s/o Gian Chand, Jagdish Chand s/o Bhagirath and Mahinder Singh had been engaged by the department after the disengagement of the petitioner and that they are still working continuously with the department and have also been regularized. Further, he admitted that Ex.RW1/B had been issued by the department.

12. Ex.RW1/B is the copy of details of working of the petitioner in B&R Sub Divisions, HPPWD Baldwara.

13. Ex.RW1/C is the copy of detail of working days of Class-IV daily waged workers who have completed eight years and more service as on 31-3-2008 screened by the Screening Committee.

14. It is an admitted fact that the services of the petitioner were engaged as a daily waged beldar by the respondents and that he had worked with respondent No. 2. The petitioner as per his pleadings and evidence claimed that he had worked continuously in the years 1997 and 1998. However, the respondents have taken the stand that the petitioner had worked intermittently with respondent No. 2 and had only worked for 26 days in the year 1997 and for 41 days in the year 1998. The details of working of the petitioner has been produced on record by the respondents as Ex. RW1/B. It appears to have not been disputed by the petitioner, as it was merely suggested by the petitioner to respondent No. 2 that Ex.RW1/B had been issued by the department. He admitted the suggestion. It was nowhere suggested to respondent No. 2 that the working details above-mentioned was not factually correct. As per the working details Ex.RW1/B, the petitioner had only worked for 26 days in the month of December, 1997 and for 41 days in the year 1998 *i.e.* 18 days in January, 1998 and 23 days in February, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that he had continuously in the years 1997 and 1998, as claimed.

15. The version of the petitioner is that his services were wrongly and illegally terminated by the respondents in the month of February, 1998. While denying the said fact, the respondents

have pleaded that the petitioner, who had worked intermittently, had left the job of his own accord and free volition.

16. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Vinod Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondents are proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of February, 1998. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. The petitioner while under cross-examination categorically admitted that he cannot produce any document evidencing that he had continuously worked for 240 days in a year. It is evident from the working details of the petitioner, Ex.RW1/B that he had only worked for a total of 67 days in the years 1997 and 1998. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. Ex.RW1/C is a seniority list of beldar category workmen. It is an admitted document on the part of the respondents. Shri Vinod Kumar Sharma (RW1) categorically admitted in his

cross-examination that the department has placed the seniority list of workers on the file as Ex.RW1/C. This seniority list of beldar category gains significance. The name of Shri Puran Chand figures at serial No. 67 of the list. He as per this list was appointed by the respondents in B&R Sub Division Baldwara in January, 1998. The names of workers figuring at serial No. 65, 66 and 68 were also appointed by the respondents in B&R Division Sarkaghat in the months of January and February, 1998 respectively. This list gives the year-wise working details of the above mentioned workers upto the year 2007. The date of initial appointment of the petitioner as per the Ex.RW1/B is November, 1997. This indicates that persons junior to the petitioner had been serving the respondents/department even after the disengagement of the petitioner, which as per the reference took place on February, 1998. To my mind, the latter have failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. Not only this, Jagdish Chand, Balwant Singh, Sunil, Nand Lal, Jagdish Chand s/o Gian Chand, Jagdish Chand s/o Bhagirath and Mahinder Singh etc., who all were engaged by the department after the disengagement of the petitioner, are still continuously working with the department and have also been regularized. It, thus, shows that new/fresh hands were engaged by the respondents. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-G and 25- H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though

the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about three months and had actually worked for 67 days as per the details of the working of the petitioner on record and that his services were disengaged in February, 1998, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than seventeen years *i.e.* demand notice was given on 10-6-2015. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 6% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is decided against the respondents and in favour of the petitioner.

Issue No. 3 :

27. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided against the respondents and in favour of the petitioner.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 6% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award

be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2021.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 658/2016

Date of Institution : 12-9-2016

Date of Decision : 29-4-2021

Shri Munshi Ram s/o Shri Netar Singh, r/o V.P.O. Balda, Tehsil Sarkaghat, District Mandi,
H.P. . *Petitioner.*

Versus

1. The Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P.
2. The Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P.
.. *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Munshi Ram s/o Shri Netar Singh, r/o V.P.O. Balda, Tehsil Sarkaghat, District Mandi, H.P. during July, 1998 by (i) the Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P. (ii) the Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. who has worked as beldar on daily wages basis only for 74 and 107 days during the years 1997 and 1998 respectively and has raised his industrial dispute *vide* demand notice dated 10-06-2015 after delay of more than 16 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated above and delay of more than 16 years in raising the industrial dispute, what amount of

back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. In pursuance to the reference the petitioner has averred in the statement of claim that he had worked with respondent No. 1 as a daily waged beldar in the years 1997-1998. His services were orally dispensed with by the respondents on the pretext of lack of funds/budget. However, he was assured that he would be called to work, as and when funds/budget were available. But, he was never called again thereafter. He had approached the respondents time and again for his re-engagement, but without success. No notice had been served upon him nor any retrenchment compensation had been paid. Persons junior to him and also new workers, namely S/Sh. Ramesh Chand, Mehar Singh, Manohar Lal, Karam Singh, Jiwan Lal, Baldev Chand, Duni Chand, Sunil Kumar, Roop Lal, Mast Ram, Kamlesh Kumar, Jagdish Chand, Nand Lal, Ghanshyam, Milap Singh, Balwant Singh, Padam Nath and Tulsi Ram etc. were engaged. In addition to it 411 other junior workers were retained. Fictional breaks were given to him so that he could not complete 240 days in a year. The action of the respondent is stated to be in violation of the provisions of Sections 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He is unemployed till date. Hence, the petition for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. However, it is asserted that the petitioner had worked intermittently as a daily waged beldar with respondent No. 2 *w.e.f.* July, 1997 to July, 1998. He had only worked for 98 days in the year 1997 and for 107 days in the year 1998. The services of the petitioner had never been terminated by the respondents. He himself had left the work of his own sweet will. It is denied that the petitioner had made oral as well as written requests to the respondents for re-engagement. He had only raised the demand notice in the year 2015, which was responded to by the respondents. Only those workers had been regularized by the department who had completed the requisite criteria for regularization as per the Government policy. It is denied that 411 junior workers had been regularized by the respondents. No fictional breaks had ever been given to the petitioner. He had never completed 240 days in any calendar year. So, there was no need to serve any notice upon him under Section 25-F of the Act. Since the petitioner had left the job of his own free volition, there is no violation of the provisions of Section 25-G and 25-H of the Act by the respondents. The petitioner is gainfully employed, being an agriculturist. Hence, it is prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 26-6-2018:

1. Whether termination of services of the petitioner by the respondents during July, 1998 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned vice counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2 : Lump sum compensation of ₹30,000/-

Issue No. 3 : No

Issue No. 4 : No

Relief. : Petition is partly allowed awarding lump sum compensation of ₹30,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Munshi Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he had worked for 74 days in the year 1997 for 107 days in the year 1998. He also admitted that he had not worked in the department in the months of June, 1997, December, 1997, March, 1998, June, 1998 and August, 1998. He denied that he had never been disengaged by the department. He also denied that he himself had left the job of his own sweet will. He had given in writing to the department in the years 1999, 2001, 2004, 2006, 2007, 2009, 2011 and 2013 to re-engage him. He was categorical that he cannot produce any document in this regard. He also admitted that he had raised the demand notice in the year 2015. He denied that after the year 1998 he had left the job of his own free volition. He denied that he had not worked for 240 days in any year. However, he admitted that he cannot produce any document to show that he had worked continuously for 240 days in a year. He owns land, which he cultivates. He denied that he was making a phoney statement.

11. Conversely, Shri Vinod Kumar Sharma (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he denied that the petitioner had worked as a daily wager in the years 1997 and 1998. Volunteered that, he had only worked for 98 days in the year 1997 and for

107 days in the year 1998. He specifically denied that the petitioner had completed 240 days in a calendar year. He also denied that fictional breaks were given to the petitioner by the department so that he could not complete 240 days. Further he denied that the petitioner had been disengaged by the department after February, 1998. He clearly denied that thereafter the petitioner orally as well as in writing had requested the department to re-engage him. He admitted that the department had prepared the seniority list of the workers, which is Ex.RW1/C on the file. He also admitted that as per Ex.RW1/C workers, namely, Jagdish Chand, Balwant Singh, Sunil, Nand Lal, Jagdish Chand s/o Gian Chand, Jagdish Chand s/o Bhagirath and Mahinder Singh had been engaged by the department after the disengagement of the petitioner and that they are still working continuously with the department and have also been regularized. Further, he admitted that Ex.RW1/B had been issued by the department.

12. Ex.RW1/B is the copy of details of working of the petitioner in B&R Sub Divisions, HPPWD Baldwara.

13. Ex.RW1/C is the copy of detail of working days of Class-IV daily waged workers who have completed eight years and more service as on 31-3-2008 screened by the Screening Committee.

14. It is an admitted fact that the services of the petitioner were engaged as a daily waged beldar by the respondents and that he had worked with respondent No. 2. The petitioner as per his pleadings and evidence claimed that he had worked continuously in the years 1997 and 1998. However, the respondents have taken the stand that the petitioner had worked intermittently with respondent No. 2 and had only worked for 98 days in the year 1997 and for 107 days in the year 1998. The details of working of the petitioner has been produced on record by the respondents as Ex. RW1/B. It appears to have not been disputed by the petitioner, as it was merely suggested by the petitioner to respondent No. 2 that Ex.RW1/B had been issued by the department. He admitted the suggestion. It was nowhere suggested to respondent No. 2 that the working details above-mentioned was not factually correct. As per the working details Ex.RW1/B, the petitioner had only worked for 98 days in the year 1997 *i.e.* 21 days in July, 1997, 25 days in August, 1997, 28 days in October, 1997 and 24 days in December, 1997 and for 107 days in the year 1998 *i.e.* 24 days in January, 1998, 28 days in February, 1998, 26 days in May, 1998 and 29 days in July, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that he had continuously in the years 1997 and 1998, as claimed.

15. The version of the petitioner is that his services were wrongly and illegally terminated by the respondents in the month of February, 1998. While denying the said fact, the respondents have pleaded that the petitioner, who had worked intermittently, had left the job of his own accord and free volition.

16. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Vinod Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Absence from

duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondents are proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of July, 1998. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. The petitioner while under cross-examination categorically admitted that he cannot produce any document evidencing that he had continuously worked for 240 days in a year. It is evident from the working details of the petitioner, Ex.RW1/B that he had only worked for a total of 205 days in the years 1997 and 1998. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors.. (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. Ex.RW1/C is a seniority list of beldar category workmen. It is an admitted document on the part of the respondents. Shri Vinod Kumar Sharma (RW1) categorically admitted in his cross-examination that the department has placed the seniority list of workers on the file as Ex.RW1/C. This seniority list of beldar category gains significance. The name of Shri Puran Chand figures at serial no. 67 of the list. He as per this list was appointed by the respondents in B&R Sub Division Baldwara in January, 1998. The names of workers figuring at serial No. 65, 66 and 68 were also appointed by the respondents in B&R Division Sarkaghat in the months of January and February, 1998 respectively. This list gives the year-wise working details of the above mentioned workers upto the year 2007. The date of initial appointment of the petitioner as per the Ex.RW1/B is November, 1997. This indicates that persons junior to the petitioner had been serving the respondents/department even after the disengagement of the petitioner, which as per the reference took place on February, 1998. To my mind, the latter have failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. No only this, Jagdish Chand, Balwant Singh, Sunil, Nand Lal, Jagdish Chand s/o Gian Chand, Jagdish Chand s/o Bhagirath and Mahinder Singh etc., who all were engaged by the department after the disengagement of the petitioner, are still continuously working with the department and have also been regularized. It, thus, shows that new/fresh hands were engaged by the respondents. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-G and 25- H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon'ble Supreme Court has held

that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about eight months and had actually worked for 205 days as per the details of the working of the petitioner on record and that his services were disengaged in July, 1998, who had worked as non- skilled worker and had raised the industrial dispute by issuance of demand notice after about more than sixteen years *i.e.* demand notice was given on 10-6-2015. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹35,000/- (Rupees thirty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 6% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is decided against the respondents and in favour of the petitioner.

Issue No.3 :

It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided against the respondents and in favour of the petitioner.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues *supra*, the respondent is hereby directed to pay a compensation of ₹35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 6% per annum on the said amount from the date of award till realization/ deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 671/2016

Date of Institution : 17-9-2016

Date of Decision : 29-4-2021

Shri Ishwar Dass s/o Shri Amar Singh, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P.
2. The Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S. S. Sippy, AR

For the Respondent(s) : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Ishwar Dass s/o Shri Amar Singh, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. during February, 1998 by (i) the Superintending Engineer, H.P.P.W.D. 1st Circle, District Mandi, H.P. (ii) the Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. who has worked as beldar on daily wages basis only for 47 and 50 days during the years 1997 and 1998 respectively and has raised his industrial dispute *vide* demand notice dated 10-06-2015 after delay of more than 17 years without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated above and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to the reference the petitioner has averred in the statement of claim that he had worked with respondent No.1 as a daily waged beldar in the years 1997-1998. His services were orally dispensed with by the respondents on the pretext of lack of funds/budget. However, he was assured that he would be called to work, as and when funds/budget were available. But, he was never called again thereafter. He had approached the respondents time and again for his re-engagement, but without success. No notice had been served upon him nor any retrenchment compensation had been paid. Persons junior to him and also new workers, namely S/Sh. Ramesh Chand, Mehar Singh, Manohar Lal, Karam Singh, Jiwan Lal, Baldev Chand, Duni Chand, Sunil Kumar, Roop Lal, Mast Ram, Kamlesh Kumar, Jagdish Chand, Nand Lal, Ghanshyam, Milap Singh, Balwant Singh, Padam Nath and Tulsi Ram etc. were engaged. In addition to it 411 other

junior workers were retained. Fictional breaks were given to him so that he could not complete 240 days in a year. The action of the respondent is stated to be in violation of the provisions of Sections 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He is unemployed till date. Hence, the petition for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. However, it is asserted that the petitioner had worked intermittently as a daily waged beldar with respondent No. 2 *w.e.f.* November, 1997 to February, 1998. He had only worked for 47 days in the year 1997 and for 50 days in the year 1998. The services of the petitioner had never been terminated by the respondents. He himself had left the work of his own sweet will. It is denied that the petitioner had made oral as well as written requests to the respondents for re-engagement. He had only raised the demand notice in the year 2015, which was responded to by the respondents. Only those workers had been regularized by the department who had completed the requisite criteria for regularization as per the Government policy. It is denied that 411 junior workers had been regularized by the respondents. No fictional breaks had ever been given to the petitioner. He had never completed 240 days in any calendar year. So, there was no need to serve any notice upon him under Section 25-F of the Act. Since the petitioner had left the job of his own free volition, there is no violation of the provisions of Section 25-G and 25-H of the Act by the respondents. The petitioner is gainfully employed, being an agriculturist. Hence, it is prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 26-6-2018:

1. Whether termination of services of the petitioner by the respondents during February, 1998 is/was legal and justified as alleged? . . . *OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . . *OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned vice counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2	: Lump sum compensation of ₹25,000/-
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ishwar Dass examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he had worked for 47 days in the year 1997 for 50 days in the year 1998. He also admitted that he had not worked in the department in October, 1997. He denied that he had never been disengaged by the department. He also denied that he himself had left the job of his own sweet will. He had given in writing to the department in the years 1999, 2001, 2004, 2006, 2007, 2009, 2011 and 2013 to re-engage him. He was categorical that he cannot produce any document in this regard. He also admitted that he had raised the demand notice in the year 2015. He denied that after the year 1998 he had left the job of his own free volition. He denied that he had not worked for 240 days in any year. However, he admitted that he cannot produce any document to show that he had worked continuously for 240 days in a year. He owns land, which he cultivates. He denied that he was making a phoney statement.

11. Conversely, Shri Vinod Kumar Sharma (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he denied that the petitioner had worked as a daily wager in the years 1997 and 1998. Volunteered that, he had only worked for 47 days in November, 1997 and for 50 days in the year 1998. He specifically denied that the petitioner had completed 240 days in a calendar year. He also denied that fictional breaks were given to the petitioner by the department so that he could not complete 240 days. Further he denied that the petitioner had been disengaged by the department after February, 1998. He clearly denied that thereafter the petitioner orally as well as in writing had requested the department to re-engage him. He admitted that the department had prepared the seniority list of the workers, which is Ex.RW1/C on the file. He also admitted that as per Ex.RW1/C workers, namely, Roshan Lal, Besar Singh, Balwant, Sunil Kumar, Surender Kumar, Jagdish Chand, Nand Lal and Balwant Singh had been engaged by the department after the disengagement of the petitioner and that they are still working continuously with the department and have also been regularized. Further, he admitted that Ex.RW1/B had been issued by the department.

12. Ex.RW1/B is the copy of details of working of the petitioner in B&R Sub Divisions, HPPWD Baldwara.

13. Ex.RW1/C is the copy of detail of working days of Class-IV daily waged workers who have completed eight years and more service as on 31-3-2008 screened by the Screening Committee.

14. It is an admitted fact that the services of the petitioner were engaged as a daily waged beldar by the respondents and that he had worked with respondent No. 2. The petitioner as per his pleadings and evidence claimed that he had worked continuously in the years 1997 and 1998. However, the respondents have taken the stand that the petitioner had worked intermittently with respondent No. 2 and had only worked for 47 days in the year 1997 and for 50 days in the year 1998. The details of working of the petitioner has been produced on record by the respondents as Ex. RW1/B. It appears to have not been disputed by the petitioner, as it was merely suggested by the petitioner to respondent No. 2 that Ex.RW1/B had been issued by the department. He admitted the suggestion. It was nowhere suggested to respondent No. 2 that the working details above-mentioned was not factually correct. As per the working details Ex.RW1/B, the petitioner had only worked for 47 days in the year 1997 *i.e.* 21 days in November, 1997 and 26 days in December, 1997 and for 50 days in the year 1998 *i.e.* 24 days in January, 1998 and 26 days in February, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that he had continuously in the years 1997 and 1998, as claimed.

15. The version of the petitioner is that his services were wrongly and illegally terminated by the respondents in the month of February, 1998. While denying the said fact, the respondents have pleaded that the petitioner, who had worked intermittently, had left the job of his own accord and free volition.

16. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Vinod Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondents are proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is

on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In R.M. Yellatty vs. Assistant Executive Engineer. (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of February, 1998. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. The petitioner while under cross-examination categorically admitted that he cannot produce any document evidencing that he had continuously worked for 240 days in a year. It is evident from the working details of the petitioner, Ex.RW1/B that he had only worked for a total of 97 days in the years 1997 and 1998. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. Ex.RW1/C is a seniority list of beldar category workmen. It is an admitted document on the part of the respondents. Shri Vinod Kumar Sharma (RW1) categorically admitted in his cross-examination that the department has placed the seniority list of workers on the file as Ex.RW1/C. This seniority list of beldar category gains significance. The name of Shri Puran Chand figures at serial No. 67 of the list. He as per this list was appointed by the respondents in B&R Sub Division Baldwaram in January, 1998. The names of workers figuring at serial No. 65, 66 and 68 were also appointed by the respondents in B&R Division Sarkaghat in the months of January and February, 1998 respectively. This list gives the year-wise working details of the above mentioned workers upto the year 2007. The date of initial appointment of the petitioner as per the Ex.RW1/B is November, 1997. This indicates that persons junior to the petitioner had been serving the respondents/department even after the disengagement of the petitioner, which as per the reference took place on February, 1998. To my mind, the latter have failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. Not only this, Shri Vinod Kumar Sharma (RW1) in his cross-examination admitted that S/Shri Roshan Lal, Besar Singh, Balwant, Sunil Kumar, Surender Kumar, Jagdish Chand, Nand Lal and Balwant Singh etc., who all were engaged by the department after the disengagement of the petitioner, are still continuously working with the department and have also been regularized. It, thus, shows that new/fresh hands were engaged by the respondents. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab

Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, wherein it was *inter-alia* held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon’ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon’ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon’ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon’ble Supreme Court that where the workman had worked as a daily wage or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon’ble Supreme Court has held that where a daily wage has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about four months and had actually worked for 97 days as per the details of the working of the petitioner on record and that his services were disengaged in February, 1998, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than seventeen years *i.e.* demand notice was given on 10-6-2015. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. Taking into consideration the factors mentioned above and the precedents laid down by the Hon’ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made

clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 6% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No.4 is decided against the respondents and in favour of the petitioner.

Issue No.3 :

27. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided against the respondents and in favour of the petitioner.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 6% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 661/2016

Date of Institution : 12-9-2016

Date of Decision : 29-4-2021

Shri Manohar Lal s/o Shri Sai Ram, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat,
District Mandi, H.P. *Petitioner.*

Versus

1. The Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P.
2. The Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P.
.. . . . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Manohar Lal s/o Shri Sai Ram, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. during February, 1998 by (i) the Superintending Engineer, H.P.P.W.D. 1st Circle, District Mandi, H.P. (ii) the Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. who has worked as beldar on daily wages basis only for 50 and 52 days during the years 1997 and 1998 respectively and has raised his industrial dispute *vide* demand notice dated 10-06-2015 after delay of more than 17 years without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated above and delay of more than 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In pursuance to the reference the petitioner has averred in the statement of claim that he had worked with respondent No.1 as a daily waged beldar in the years 1997-1998. His services were orally dispensed with by the respondents on the pretext of lack of funds/budget. However, he was assured that he would be called to work, as and when funds/budget were available. But, he was never called again thereafter. He had approached the respondents time and again for his re-engagement, but without success. No notice had been served upon him nor any retrenchment compensation had been paid. Persons junior to him and also new workers, namely S/Sh. Ramesh Chand, Mehar Singh, Manohar Lal, Karam Singh, Jiwan Lal, Baldev Chand, Duni Chand, Sunil Kumar, Roop Lal, Mast Ram, Kamlesh Kumar, Jagdish Chand, Nand Lal, Ghanshyam, Milap Singh, Balwant Singh, Padam Nath and Tulsi etc. were engaged. In addition to it 411 other junior workers were retained. Fictional breaks were given to him so that he could not complete 240 days in a year. The action of the respondent is stated to be in violation of the provisions of Sections 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). He is unemployed till date. Hence, the petition for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. However, it is asserted that the petitioner had worked intermittently as a daily waged beldar with respondent No. 2 *w.e.f.* November, 1997 to February, 1998. He had only worked for 50 days in the year 1997 and for 52 days in the year 1998. The services of the petitioner had never been terminated by the respondents. He himself had left the work of his own sweet will. It is denied that the petitioner had made oral as well as written requests to the respondents for re-engagement. He had only raised the demand notice in the year 2015, which was responded to by the respondents. Only those workers had been regularized by the department who had completed the requisite criteria for regularization as per the Government policy. It is denied that 411 junior workers had been regularized by the respondents. No fictional breaks had ever been given to the petitioner. He had never completed 240 days in any calendar year. So, there was no need to serve any notice upon him under Section 25-F of the Act.

Since the petitioner had left the job of his own free volition, there is no violation of the provisions of Section 25-G and 25-H of the Act by the respondents. The petitioner is gainfully employed, being an agriculturist. Hence, it is prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 26-6-2018:

1. Whether termination of services of the petitioner by the respondents during February, 1998 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned vice counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Decided accordingly
Issue No. 2	: Lump sum compensation of ₹25,000/-
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of ₹25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Manohar Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he had worked for 50 days in the year 1997 for 52 days in the year 1998. He also admitted that he had not worked in the department in October, 1997. He denied that he had never been disengaged by the department. He also denied that he himself had left the job of his own sweet will. He had given in writing to the department in the years 1999, 2001, 2004, 2006, 2007, 2009, 2011 and 2013 to re-engage him. He was categorical that he cannot produce any document in this regard. He also admitted that he had raised the demand notice in the year 2015. He denied that after the year 1998 he had left the job of his own free volition. He denied that he had not worked for 240 days in any year. However, he admitted that he cannot produce any document to show that he had worked continuously for 240 days in a year. He owns land, which he cultivates. He denied that he was making a phoney statement.

11. Conversely, Shri Vinod Kumar Sharma (respondent No. 2) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he denied that the petitioner had worked as a daily wager in the years 1997 and 1998. Volunteered that, he had only worked for 50 days in November, 1997 and for 52 days in the year 1998. He specifically denied that the petitioner had completed 240 days in a calendar year. He also denied that fictional breaks were given to the petitioner by the department so that he could not complete 240 days. Further he denied that the petitioner had been disengaged by the department after February, 1998. He clearly denied that thereafter the petitioner orally as well as in writing had requested the department to re-engage him. He admitted that the department had prepared the seniority list of the workers, which is Ex.RW1/C on the file. He also admitted that as per Ex.RW1/C workers, namely Roshan Lal, Besar Singh, Balwant, Sunil Kumar, Surender Kumar, Jagdish Chand, Nand Lal and Balwant Singh had been engaged by the department after the disengagement of the petitioner and that they are still working continuously with the department and have also been regularized. Further, he admitted that Ex.RW1/B had been issued by the department.

12. Ex.RW1/B is the copy of details of working of the petitioner in B&R Sub Divisions, HPPWD Baldwara.

13. Ex.RW1/C is the copy of detail of working days of Class-IV daily waged workers who have completed eight years and more service as on 31-3-2008 screened by the Screening Committee.

14. It is an admitted fact that the services of the petitioner were engaged as a daily waged beldar by the respondents and that he had worked with respondent No. 2. The petitioner as per his pleadings and evidence claimed that he had worked continuously in the years 1997 and 1998. However, the respondents have taken the stand that the petitioner had worked intermittently with respondent No. 2 and had only worked for 50 days in the year 1997 and for 52 days in the year 1998. The details of working of the petitioner has been produced on record by the respondents as Ex. RW1/B. It appears to have not been disputed by the petitioner, as it was merely suggested by the petitioner to respondent No. 2 that Ex.RW1/B had been issued by the department. He admitted the suggestion. It was nowhere suggested to respondent No. 2 that the working details above-mentioned was not factually correct. As per the working details Ex.RW1/B, the petitioner had only worked for 50 days in the year 1997 *i.e.* 24 days in January, 1997 and 26 days in December, 1997 and for 52 days in the year 1998 *i.e.* 24 days in January, 1998 and 28 days in February, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that he had continuously in the years 1997 and 1998, as claimed.

15. The version of the petitioner is that his services were wrongly and illegally terminated by the respondents in the month of February, 1998. While denying the said fact, the respondents

have pleaded that the petitioner, who had worked intermittently, had left the job of his own accord and free volition.

16. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Vinod Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the evidence on record, so was not done by the respondents. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondents are proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of February, 1998. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. The petitioner while under cross-examination categorically admitted that he cannot produce any document evidencing that he had continuously worked for 240 days in a year. It is evident from the working details of the petitioner, Ex.RW1/B that he had only worked for a total of 102 days in the years 1997 and 1998. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. Ex.RW1/C is a seniority list of beldar category workmen. It is an admitted document on the part of the respondents. Shri Vinod Kumar Sharma (RW1) categorically admitted in his

cross-examination that the department has placed the seniority list of workers on the file as Ex.RW1/C. This seniority list of beldar category gains significance. The name of Shri Puran Chand figures at serial No. 67 of the list. He as per this list was appointed by the respondents in B&R Sub Division Baldwara in January, 1998. The names of workers figuring at serial No. 65, 66 and 68 were also appointed by the respondents in B&R Division Sarkaghat in the months of January and February, 1998 respectively. This list gives the year-wise working details of the above mentioned workers upto the year 2007. The date of initial appointment of the petitioner as per the Ex.RW1/B is November, 1997. This indicates that persons junior to the petitioner had been serving the respondents/department even after the disengagement of the petitioner, which as per the reference took place on February, 1998. To my mind, the latter have failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. Not only this, Shri Vinod Kumar Sharma (RW1) in his cross-examination admitted that S/Shri Roshan Lal, Besar Singh, Balwant, Sunil Kumar, Surender Kumar, Jagdish Chand, Nand Lal and Balwant Singh etc., who all were engaged by the department after the disengagement of the petitioner, are still continuously working with the department and have also been regularized. It, thus, shows that new/fresh hands were engaged by the respondents. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was *inter-alia* held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though

the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about four months and had actually worked for 102 days as per the details of the working of the petitioner on record and that his services were disengaged in February, 1998, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than seventeen years *i.e.* demand notice was given on 10.6.2015. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 6% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is decided against the respondents and in favour of the petitioner.

Issue No. 3 :

27. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided against the respondents and in favour of the petitioner.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 6% per annum on the said amount from the date of award till realization/ deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the

appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2021.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 669/2016

Date of Institution : 17-9-2016

Date of Decision : 29-4-2021

Shri Gulab Chand s/o Shri Hardev, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P.
2. The Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of the services of Shri Gulab Chand s/o Shri Hardev, r/o Village Karadwhan, P.O. Chowk, Tehsil Sarkaghat, District Mandi, H.P. during February, 1998 by (i) the Superintending Engineer, H.P.P.W.D. 1st Circle, Mandi, District Mandi, H.P. (ii) the Executive Engineer, B&R Division, H.P.P.W.D. Sarkaghat, District Mandi, H.P. who has worked as beldar on daily wages basis only for 49 and 52 days during the years 1997 and 1998 respectively and has raised his industrial dispute *vide* demand notice dated 10-06-2015 after delay of more than 17 years without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period stated above and delay of more than 17 years in raising the industrial

dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. In pursuance to the reference the petitioner has averred in the statement of claim that he had worked with respondent no.1 as a daily waged beldar in the years 1997-1998. His services were orally dispensed with by the respondents on the pretext of lack of funds/budget. However, he was assured that he would be called to work, as and when funds/budget were available. But, he was never called again thereafter. He had approached the respondents time and again for his re-engagement, but without success. No notice had been served upon him nor any retrenchment compensation had been paid. Persons junior to him and also new workers, namely S/Sh. Ramesh Chand, Mehar Singh, Manohar Lal, Karam Singh, Jiwan Lal, Baldev Chand, Duni Chand, Sunil Kumar, Roop Lal, Mast Ram, Kamlesh Kumar, Jagdish Chand, Nand Lal, Ghanshyam, Milap Singh, Balwant Singh, Padam Nath and Tulsi etc. were engaged. In addition to it 411 other junior workers were retained. Fictional breaks were given to him so that he could not complete 240 days in a year. The action of the respondent is stated to be in violation of the provisions of Sections 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He is unemployed till date. Hence, the petition for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. However, it is asserted that the petitioner had worked intermittently as a daily waged beldar with respondent No. 2 *w.e.f.* November, 1997 to February, 1998. He had only worked for 49 days in the year 1997 and for 52 days in the year 1998. The services of the petitioner had never been terminated by the respondents. He himself had left the work of his own sweet will. It is denied that the petitioner had made oral as well as written requests to the respondents for re-engagement. He had only raised the demand notice in the year 2015, which was responded to by the respondents. Only those workers had been regularized by the department who had completed the requisite criteria for regularization as per the Government policy. It is denied that 411 junior workers had been regularized by the respondents. No fictional breaks had ever been given to the petitioner. He had never completed 240 days in any calendar year. So, there was no need to serve any notice upon him under Section 25-F of the Act. Since the petitioner had left the job of his own free volition, there is no violation of the provisions of Section 25-G and 25-H of the Act by the respondents. The petitioner is gainfully employed, being an agriculturist. Hence, it is prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 26-6-2018:

1. Whether termination of services of the petitioner by the respondents during February, 1998 is/was legal and justified as alleged? . . .*OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned vice counsel for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Decided accordingly

Issue No. 2 : Lump sum compensation of ₹25,000/-

Issue No. 3 : No

Issue No. 4 : No

Relief. : Petition is partly allowed awarding lump sum compensation of ₹25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Gulab Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he had worked for 49 days in the year 1997 for 52 days in the year 1998. He also admitted that he had not worked in the department in October, 1997. He denied that he had never been disengaged by the department. He also denied that he himself had left the job of his own sweet will. He had given in writing to the department in the years 1999, 2001, 2004, 2006, 2007, 2009, 2011 and 2013 to re-engage him. He was categorical that he cannot produce any document in this regard. He also admitted that he had raised the demand notice in the year 2015. He denied that after the year 1998 he had left the job of his own free volition. He denied that he had not worked for 240 days in any year. However, he admitted that he cannot produce any document to show that he had worked continuously for 240 days in a year. He owns land, which he cultivates. He denied that he was making a phoney statement.

11. Conversely, Shri Vinod Kumar Sharma (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he denied that the petitioner had worked as a daily wager in the years 1997 and 1998. Volunteered that, he had only worked for 49 days in November, 1997 and for 52 days in the year 1998. He specifically denied that the petitioner had completed 240 days in a

calendar year. He also denied that fictional breaks were given to the petitioner by the department so that he could not complete 240 days. Further he denied that the petitioner had been disengaged by the department after February, 1998. He clearly denied that thereafter the petitioner orally as well as in writing had requested the department to re-engage him. He admitted that the department had prepared the seniority list of the workers, which is Ex.RW1/C on the file. He also admitted that as per Ex.RW1/C workers, namely, S/Sh. Jagdish Chand, Balwant Singh, Sunil, Nand Lal, Jagdish Chand s/o Gian Chand, Jagdish Chand s/o Bhagirath and Mahinder Singh had been engaged by the department after the disengagement of the petitioner and that they are still working continuously with the department and have also been regularized. Further, he admitted that Ex.RW1/B had been issued by the department.

12. Ex.RW1/B is the copy of details of working of the petitioner in B&R Sub Divisions, HPPWD Baldwara.

13. Ex.RW1/C is the copy of detail of working days of Class-IV daily waged workers who have completed eight years and more service as on 31-3-2008 screened by the Screening Committee.

14. It is an admitted fact that the services of the petitioner were engaged as a daily waged beldar by the respondents and that he had worked with respondent No. 2. The petitioner as per his pleadings and evidence claimed that he had worked continuously in the years 1997 and 1998. However, the respondents have taken the stand that the petitioner had worked intermittently with respondent No. 2 and had only worked for 49 days in the year 1997 and for 52 days in the year 1998. The details of working of the petitioner has been produced on record by the respondents as Ex. RW1/B. It appears to have not been disputed by the petitioner, as it was merely suggested by the petitioner to respondent No. 2 that Ex.RW1/B had been issued by the department. He admitted the suggestion. It was nowhere suggested to respondent No. 2 that the working details above-mentioned was not factually correct. As per the working details Ex.RW1/B, the petitioner had only worked for 49 days in the year 1997 *i.e.* 23 days in November, 1997 and 26 days in December, 1997 and for 52 days in the year 1998 *i.e.* 24 days in January, 1998 and 28 days in February, 1998. The claimant/petitioner has not placed or exhibited on record any document to show that he had continuously in the years 1997 and 1998, as claimed.

15. The version of the petitioner is that his services were wrongly and illegally terminated by the respondents in the month of February, 1998. While denying the said fact, the respondents have pleaded that the petitioner, who had worked intermittently, had left the job of his own accord and free volition.

16. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Vinod Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondents. In the present case as it emerges from the

evidence on record, so was not done by the respondents. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondents/employer is not established.

17. Now the question: Whether in terminating the services of the petitioner, the respondents are proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

18. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in the preceding twelve calendar months prior to his alleged retrenchment. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

19. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of February, 1998. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. The petitioner while under cross-examination categorically admitted that he cannot produce any document evidencing that he had continuously worked for 240 days in a year. It is evident from the working details of the petitioner, Ex.RW1/B that he had only worked for a total of 101 days in the years 1997 and 1998. It has been laid down by the Hon'ble Supreme Court in case titled as Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138 that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

20. Ex.RW1/C is a seniority list of beldar category workmen. It is an admitted document on the part of the respondents. Shri Vinod Kumar Sharma (RW1) categorically admitted in his cross-examination that the department has placed the seniority list of workers on the file as Ex.RW1/C. This seniority list of beldar category gains significance. The name of Shri Puran Chand figures at serial No. 67 of the list. He as per this list was appointed by the respondents in B&R Sub Division Baldwara in January, 1998. The names of workers figuring at serial No. 65, 66 and 68 were also appointed by the respondents in B&R Division Sarkaghat in the months of January and February, 1998 respectively. This list gives the year-wise working details of the above mentioned workers upto the year 2007. The date of initial appointment of the petitioner as per the Ex.RW1/B is November, 1997. This indicates that persons junior to the petitioner had been serving the respondents/department even after the disengagement of the petitioner, which as per the reference took place on February, 1998. To my mind, the latter have failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. No only this, Shri Vinod Kumar Sharma (RW1) in his cross-examination admitted that S/Sh. Jagdish Chand, Balwant Singh, Sunil, Nand Lal, Jagdish Chand s/o Gian Chand, Jagdish Chand s/o Bhagirath and Mahinder Singh etc., who all were engaged by the department after the

disengagement of the petitioner, are still continuously working with the department and have also been regularized. It, thus, shows that new/fresh hands were engaged by the respondents. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors. 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum

monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about four months and had actually worked for 101 days as per the details of the working of the petitioner on record and that his services were disengaged in February, 1998, who had worked as non-skilled worker and had raised the industrial dispute by issuance of demand notice after about more than seventeen years *i.e.* demand notice was given on 10-6-2015. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 6% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue No. 4 is decided against the respondents and in favour of the petitioner.

Issue No.3 :

27. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided against the respondents and in favour of the petitioner.

Relief :

28. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 6% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of April, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी सुजानपुर, तहसील सुजानपुर,
जिला हमीरपुर (हि0 प्र0)**

केस नम्बर : 01/2021

किस्म मुकद्दमा : इन्द्राज जन्म तिथि

तारीख पेशी/सुनवाई—

दायर तिथि : 27-03-2020

श्रीमती मलकां देवी पुत्री गोवर्धन सिंह, निवासी महाल पलाही, डाकघर वीड वगेहडा, तहसील सुजानपुर, जिला हमीरपुर (हि0 प्र0)।
प्रार्थिया।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 श्रीमती मलकां देवी पुत्री गोवर्धन सिंह निवासी महाल पलाही, डाकघर वीड वगेहडा, तहसील सुजानपुर, जिला हमीरपुर (हि0 प्र0) के सम्बन्ध में इशतहार/सूचना राजपत्र (हि0प्र0) में प्रकाशित करने बारे।

श्रीमती मलकां देवी पुत्री गोवर्धन सिंह, निवासी महाल पलाही, डाकघर वीड वगेहडा, तहसील सुजानपुर, जिला हमीरपुर (हि0 प्र0) द्वारा आवेदन पत्र शपथ—पत्र व अन्य सम्बन्धित दस्तावेजों/रिकार्ड सहित इस कार्यालय में प्राप्त हुआ है। जिसमें उल्लेख है कि श्रीमती मलकां देवी पुत्री गोवर्धन सिंह, निवासी महाल पलाही, डाकघर वीड वगेहडा, तहसील सुजानपुर, जिला हमीरपुर (हि0 प्र0) का जन्म दिनांक 29-01-1954 को हुआ है जो कि अज्ञानतावश सम्बन्धित ग्राम पंचायत खनौहली के जन्म व मृत्यु रजिस्टर में आज दिन तक दर्ज नहीं हुआ है अतः प्रार्थिया अपनी जन्म तिथि की घटना का पंजीकरण ग्राम पंचायत खनौहली के रिकार्ड में दर्ज करवाना चाहती है।

इस बारे आरंभिक छानवीन क्षेत्रीय राजस्व इकाई से करवाई गई, जिसमें श्रीमती मलकां देवी पुत्री गोवर्धन सिंह, निवासी महाल पलाही, डाकघर वीड वगेहडा, तहसील सुजानपुर, जिला हमीरपुर हिमाचल प्रदेश का जन्म दिनांक 29-01-1954 को होना पाया गया है।

अतः इस इशतहार/सूचना द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थिया श्रीमती मलकां देवी पुत्री गोवर्धन सिंह, निवासी महाल पलाही, डाकघर वीड वगेहडा, तहसील सुजानपुर, जिला हमीरपुर (हि0 प्र0) की जन्म तिथि 29-01-1954 की घटना का पंजीकरण ग्राम पंचायत खनौहली के रिकार्ड में दर्ज करवाने बारे कोई आपत्ति हो तो वह असातन या वकालतन दिनांक 24-08-2021 को इस अदालत में प्रातः 11.00 बजे उपस्थित होकर अपना उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर उक्त जन्म तिथि की घटना दर्ज करने बारे नियमानुसार आदेश पारित कर दिए जाएंगे तथा बाद में किसी भी प्रकार का कोई भी उजर मान्य नहीं होगा।

आज दिनांक 24-07-2021 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—

कार्यकारी दण्डाधिकारी एवं तहसीलदार,
सुजानपुर, जिला हमीरपुर (हि0 प्र0)।

**ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, पालमपुर, जिला कांगड़ा
(हि0 प्र0)**

किस्म मुकद्दमा : जन्म पंजीकरण/मृत्यु पंजीकरण

तारीख पेशी : 24-08-2021

राजिन्द्र कुमार

बनाम

प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

प्रार्थी श्री राजिन्द्र कुमार पुत्र श्री मस्त राम, निवासी गांव भटटू शमूला, डा0 भटटू शमूला, तहसील पालमपुर, जिला कांगड़ा (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र पेश किया है कि प्रार्थी के बेटे गौरव शर्मा का जन्म दिनांक 07-09-1982 को गांव व डाकघर भटटू शमूला, ग्राम पंचायत फरेड़, तहसील पालमपुर में हुआ था मगर अज्ञानतावश ग्राम पंचायत फरेड़ के अभिलेख में जन्म तिथि पंजीकृत न करवाई गई। अतः सम्बन्धित ग्राम पंचायत को जन्म पंजीकरण के आदेश पारित किए जाएं।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 24-08-2021 को अधोहस्ताक्षरी की अदालत में सुबह 11.00 बजे अदालतन या वकालतन हाजिर होकर अपना पक्ष पेश कर सकते हैं। बाद गुजरने मियाद कोई भी उजर या एतराज काबिले समायत न होंगे तथा प्रार्थी के बेटे गौरव शर्मा की जन्म तिथि पंजीकरण दिनांक 07-09-1982 के आदेश सम्बन्धित ग्राम पंचायत को जारी कर दिए जाएंगे।

आज दिनांक 05-08-2021 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
पालमपुर, जिला कांगड़ा (हि0 प्र0)।

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, पालमपुर, जिला कांगड़ा
(हि0 प्र0)

किस्म मुकद्दमा : जन्म पंजीकरण/मृत्यु पंजीकरण

तारीख पेशी : 24-08-2021

गंगो देवी

बनाम

सर्वसाधारण एवं आम जनता

प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

प्रार्थिन श्रीमती गंगो देवी पुत्री श्री जति राम, निवासी गांव वाड़ी खास, डा0 कमलेहड़, तहसील पालमपुर, जिला कांगड़ा (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र पेश किया है कि प्रार्थिन गंगो देवी का जन्म दिनांक 01-01-1968 को गांव वाड़ी खास, डा0 कमलेहड़, तहसील पालमपुर में हुआ था मगर अज्ञानतावश सम्बन्धित ग्राम पंचायत के अभिलेख में जन्म तिथि पंजीकृत न करवाई गई। अतः सम्बन्धित ग्राम पंचायत को जन्म पंजीकरण के आदेश पारित किए जाएं।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो दिनांक 24-08-2021 को अधोहस्ताक्षरी की अदालत में सुबह 11.00 बजे अदालतन या वकालतन हाजिर होकर अपना पक्ष पेश कर सकते हैं। बाद गुजरने मियाद कोई भी उजर या

एतराज काबिले समायत न होंगे तथा प्रार्थिन श्रीमती गंगो देवी की जन्म तिथि पंजीकरण दिनांक 01-01-1968 के आदेश सम्बन्धित गाम पंचायत को जारी कर दिए जाएंगे।

आज दिनांक 05-08-2021 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।
मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
पालमपुर, जिला कांगड़ा (हि0 प्र0)।

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, पालमपुर, जिला कांगड़ा
(हि0 प्र0)

किस्म मुकद्दमा : नाम दुरुस्ती

तारीख पेशी : 31-08-2021

रविन्द्र कुमार

बनाम

सर्वसाधारण एवं आम जनता

प्रार्थना-पत्र बराए नाम दुरुस्ती।

प्रार्थी रविन्द्र कुमार पुत्र श्री कशमीर सिंह, निवासी गांव राख, डाकघर पालमपुर, तहसील पालमपुर, जिला कांगड़ा (हि0 प्र0) ने इस न्यायालय में प्रार्थना-पत्र पेश किया है कि प्रार्थी का नाम रविन्द्र कुमार है। परन्तु महाल राख जमाबन्दी साल 2016-2017 के राजस्व रिकार्ड में भिन्दर कुमार पुत्र श्री कशमीर सिंह दर्ज है जोकि गलत है इसलिए मैं अपने नाम की दुरुस्ती करवाना चाहता हूं। अतः सम्बन्धित राजस्व अभिलेख में प्रार्थी रविन्द्र कुमार के नाम की दुरुस्ती के आदेश पारित किए जाएं।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर या एतराज हो तो वह दिनांक 31-08-2021 को अधोहस्ताक्षरी की अदालत में सुबह 11.00 बजे असातन या वकालतन हाजिर होकर अपना पक्ष पेश कर सकते हैं। बाद गुजरने मियाद कोई भी उजर/एतराज काबिले समायत न होंगे तथा प्रार्थी के नाम भिन्दर कुमार के बजाए सही नाम भिन्दर कुमार उपनाम रविन्द्र कुमार पुत्र कशमीर सिंह की दुरुस्ती के आदेश सम्बन्धित राजस्व अभिलेख में दर्ज करने के आदेश जारी कर दिए जाएंगे।

आज दिनांक 05-08-2021 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।
मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
पालमपुर, जिला कांगड़ा (हि0 प्र0)।

ब अदालत तहसीलदार एवं सहायक समाहर्ता, द्वितीय श्रेणी पालमपुर, जिला कांगड़ा (हि0 प्र0)

किस्म मुकद्दमा : इन्तकाल मकफूद उल्खबरी

तारीख पेशी : 26-08-2021

श्रीमती गीता देवी पुत्री श्री साहणू, निवासी महाल लाहला खास, तहसील पालमपुर, जिला कांगड़ा (हि0 प्र0)
प्रार्थिया।

बनाम

आम जनता

इन्तकाल मखफूद उल्लेखबरी :- टेको पुत्र साहणू पुत्र फीडा, निवासी महाल लाहला खास के नाम खाता नं० 33 खतौनी नं० 71 खसरा नं० 1390, 1391, 1393, 1394 रकबा तादादी 00-31-60 भाग जमाबन्दी 2012-2013 में दर्ज कागजात माल करने बारे।

श्रीमती गीता देवी पुत्री श्री साहणू निवासी महाल लाहला खास, तहसील पालमपुर, जिला कांगड़ा (हि० प्र०) ने इस न्यायालय में प्रार्थना-पत्र पेश किया कि उसके भाई टेको पुत्र साहणू पुत्र फीडा, निवासी महाल लाहला खास, तहसील पालमपुर, जिला कांगड़ा (हि० प्र०) वर्ष 1926 से लापता है और न ही स्थानीय पंचायत में किसी से और न ही हमारे किसी रिश्तेदार से, किसी व्यक्ति से उनका कोई सम्पर्क है, इसलिए उनको मृत घोषित करके उनकी सम्पत्ति जो कि महाल लाहल खास में स्थित है का इन्तकाल उत्तराधिकारी के नाम दर्ज किया जाए।

अतः आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि इस केस बारे किसी को भी उजर या एतराज हो तो वह दिनांक 26-08-2021 को अधोहस्ताक्षरी की अदालत में असालतन या बकालतन हाजिर होकर पेश कर सकते हैं। अन्यथा गैरहाजिरी की सूरत में यकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 05-08-2021 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/-
सहायक समाहर्ता द्वितीय श्रेणी,
पालमपुर, जिला कांगड़ा (हि० प्र०)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, डाडा सीबा, जिला कांगड़ा (हि० प्र०)

दीक्षा ठाकुर पुत्री श्री कृपाल सिंह, निवासी महाल जखधार, डाकघर टिप्परी, तहसील डाडा सीबा, जिला कांगड़ा (हि० प्र०) प्रार्थिया।

बनाम

आम जनता

प्रत्यार्थीगण।

उनवान मुकद्दमा.-प्रार्थना-पत्र दुरुस्ती नाम कागजात माल महाल जखधार, तहसील डाडा सीबा, जिला कांगड़ा (हि० प्र०)।

प्रार्थिया दीक्षा ठाकुर पुत्री श्री कृपाल सिंह, निवासी महाल जखधार, डाकघर टिप्परी, तहसील डाडा सीबा, जिला कांगड़ा (हि० प्र०) ने अदालत हजा में सशपथ प्रार्थना-पत्र दिया है कि उसका सही नाम पंचायत रिकार्ड, आधार कार्ड व स्कूल रिकार्ड में दीक्षा ठाकुर पुत्री श्री कृपाल सिंह है जबकि राजस्व रिकार्ड महाल जखधार में उसका नाम दीक्षा पुत्री कृपाल सिंह पुत्र मेहर सिंह दर्ज है जो सही न है। प्रार्थिया ने उपरोक्त नाम की दुरुस्ती करवाने बारे अनुरोध किया है।

अतः उपरोक्त नाम दुरुस्ती बारे सर्वसाधारण आम जनता को इस राजपत्र इश्तहार व मुश्री मुनादी द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दुरुस्ती बारे कोई उजर/एतराज हो तो वह दिनांक 27-08-2021 को प्रातः 10.00 बजे इस मुकद्दमा की पैरवी हेतु व्यक्तिगत रूप से अथवा किसी अधिकृत

एजेंट के माध्यम से या किसी अधिवक्ता के माध्यम से इस न्यायालय में उपस्थित आवें। गैरहाजिरी की सूरी में नाम की दुरुस्ती करने हेतु आदेश पारित कर दिये जायेंगे। बाद मियाद तारीख पेशी कोई उजर/एतराज काबिले गौर न होगा।

आज दिनांक 09-08-2021 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता द्वितीय श्रेणी,
डाडा सीबा, जिला कांगड़ा (हि0 प्र0)।

**In the Court of Sh. Manmohan Singh HPAS, Marriage Officer-cum- Sub-Divisional
Magistrate, Nichar at Bhabanagar, District Kinnaur (H.P.)**

In the matter of :

1. Sant Kumar s/o Sh. Virender Kumar, r/o Village Yulla, Sub-Tehsil Tapri, District Kinnaur (H.P.).
2. Monika d/o Sh. Sunder Sain, r/o Village & P.O. Rarang, Tehsil Moorang, District Kinnaur (H.P.) . .Applicants.

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 8 (4) of the H.P. Registration of Marriages Act, 1996.

In the above noted matter, Sant Kumar s/o Sh. Virender have filed an application on dated 06-03-2021 alongwith affidavits in the court of undersigned under section 8 (4) of the H.P. Registration of Marriage Act, 1996 that they have solemnized their marriage on dated 10-12-2011 according to the custom & ritual of Hindu religion since from the date of marriage they are living together as husband & wife, hence their marriage may be registered under section 8 (4) of the H.P. Registration of Marriage Act, 1996.

Therefore, the general public & parents of the applicants are hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally in writing or through their legal advisor before this court on or before dated 24th August, 2021. The objections received after 24th August, 2021 will not be entertained and marriage will be registered accordingly.

Issued today on 24th July, 2021 under my hand and seal of this court.

Seal.

MANMOHAN SINGH (HPAS),
Marriage Officer -cum-Sub-Divisional Magistrate,
Nichar at Bhabanagar, District Kinnaur H.P.

ब अदालत श्री राम दयाल, तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू, जिला कुल्लू (हि0 प्र0)

केस नं0 : 40/BE/NT/2021

बनाम

आम जनता

विषय.—प्रार्थना-पत्र अधिनियम धारा 13 (3) जन्म एवं मृत्यु पंजीकरण, अधिनियम 1969 बारे।

श्रीमती श्यामू देवी पुत्री श्री कालू राम, निवासी डुगीलग, डाकघर डुगीलग, तहसील व जिला कुल्लू, हिमाचल प्रदेश ने इस कार्यालय में प्रार्थना-पत्र मय समथ पत्र प्रस्तुत किया है कि इसका जन्म दिनांक 22-06-1973 को हुआ है परन्तु उसकी जन्म तिथि का इन्द्राज किसी कारणवश नगर परिषद्/ग्राम पंचायत डुगीलग के अभिलेख में दर्ज न की गई है।

अतः इस इशतहार हजा द्वारा सर्वसाधारण व सम्बन्धीगणों को सूचित किया जाता है कि यदि किसी व्यक्ति विशेष को इनकी जन्म तिथि दर्ज करवाने बारे में कोई आपत्ति हो तो वह दिनांक 24-08-2021 को सुबह 10.00 बजे या इससे पूर्व असातन व वकालतन हाजिर अदालत आकर अपना उजर व एतराज दर्ज करवा सकता है इसके उपरान्त कोई भी उजर/एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश संबन्धित नगर परिषद्/ग्राम पंचायत को पारित कर दिए जायेंगे।

आज दिनांक 24-07-2021 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

राम दयाल,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
कुल्लू, जिला कुल्लू (हि0 प्र0)।

ब अदालत श्री राम दयाल, नायब-तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू, जिला कुल्लू (हि0 प्र0)

केस नं0 : 41/BE/NT/2021

बनाम

आम जनता

विषय.—प्रार्थना-पत्र अधिनियम धारा 13 (3) जन्म एवं मृत्यु पंजीकरण, अधिनियम 1969 बारे।

श्री शेर सिंह पुत्र श्री गोम्बो, निवासी सोयल, डाकघर कराडसू, तहसील व जिला कुल्लू, हिमाचल प्रदेश ने इस कार्यालय में प्रार्थना-पत्र मय समथ पत्र प्रस्तुत किया है कि इनकी पत्नी की मृत्यु दिनांक 10-09-19 को हुई है परन्तु उसकी मृत्यु तिथि का इन्द्राज किसी कारणवश नगर परिषद्/ग्राम पंचायत कराडसू के अभिलेख में दर्ज न की गई है।

अतः इस इशतहार हजा द्वारा सर्वसाधारण व सम्बन्धीगणों को सूचित किया जाता है कि यदि किसी व्यक्ति विशेष को डोलमा की मृत्यु तिथि दर्ज करवाने बारे में कोई आपत्ति हो तो वह दिनांक 24-08-2021 को सुबह 10.00 बजे या इससे पूर्व असातन व वकालतन हाजिर अदालत आकर अपना उजर व एतराज

दर्ज करवा सकता है इसके उपरान्त कोई भी उजर/एतराज समायत न होगा तथा नियमानुसार मृत्यु तिथि दर्ज करवाने के आदेश संबंधित नगर परिषद्/ग्राम पंचायत को पारित कर दिए जायेंगे।

आज दिनांक 24-07-2021 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

राम दयाल,
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
कुल्लू जिला कुल्लू (हि0 प्र0)।

ब अदालत श्री हुक्म राम, सहायक समाहर्ता द्वितीय श्रेणी, तहसील कार्यालय पधर,
जिला मण्डी (हि0 प्र0)

उनवान मुकद्दमा : 37(2)

तारीख पेशी : 25-08-2021

श्री राजू राम पुत्र बीरी सिंह, गांव समखेतर, डाकघर व तहसील पधर, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

दावा : नाम दुरुस्ती।

आवेदन पत्र जेर धारा 37(2) के अन्तर्गत नाम दुरुस्त करने बारे।

आवेदक श्री राजू राम पुत्र बीरी सिंह, गांव समखेतर, डाकघर व तहसील पधर, जिला मण्डी (हि0 प्र0) ने इस अदालत में पत्र गुजारा है कि उसका नाम ग्राम पंचायत डलाह के रिकार्ड में राजू राम दर्ज है, जबकि मुहाल डलाह के तमाम राजस्व अभिलेख में उसका नाम राजू दर्ज हुआ है जो कि गलत दर्ज हुआ है तथा आवेदक ने इस कार्यालय में इस अदालत से प्रार्थना की है कि उसका नाम मुहाल डलाह के रिकार्ड में राजू के स्थान पर राजू राम दर्ज करने के आदेश दिये जावें।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दर्ज करने बारे कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 25-08-2021 को सुबह 10.00 बजे हाजिर होकर अपना उजर पेश कर सकता है, बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इश्तहार आज दिनांक 04-08-2021 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
(हुक्म राम),
सहायक समाहर्ता द्वितीय श्रेणी,
पधर, तहसील पधर, जिला मण्डी (हि0 प्र0)।

**ब अदालत श्री हुक्म राम, सहायक समाहर्ता द्वितीय श्रेणी, तहसील कार्यालय पधर,
जिला मण्डी (हि0 प्र0)**

उनवान मुकद्दमा : 37(2)

तारीख पेशी : 25-08-2021

श्री मिलखी राम पुत्र शुभकरण, गांव व डाकघर कुन्नु, तहसील पधर, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

प्रत्यार्थी।

दावा : नाम दुरुस्ती।

आवेदन पत्र जेर धारा 37(2) के अन्तर्गत नाम दुरुस्त करने बारे।

आवेदक श्री मिलखी राम पुत्र शुभकरण, गांव व डाकघर कुन्नु, तहसील पधर, जिला मण्डी (हि0 प्र0) ने इस अदालत में पत्र गुजारा है कि उसका नाम ग्राम पंचायत कुन्नु के रिकार्ड में मिलखी राम दर्ज है, जबकि मुहाल कुन्नु के तमाम राजस्व अभिलेख में उसका नाम मिलखी दर्ज हुआ है जो गलत दर्ज हुआ है तथा आवेदक ने इस कार्यालय में इस अदालत से प्रार्थना की है कि उसका नाम मुहाल कुन्नु के रिकार्ड में मिलखी राम दर्ज करने के आदेश दिये जावें।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दर्ज करने बारे कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 25-08-2021 को सुबह 10.00 बजे हाजिर होकर अपना उजर पेश कर सकता है, बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 04-08-2021 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—

(हुक्म राम),

सहायक समाहर्ता द्वितीय श्रेणी,
पधर, तहसील पधर, जिला मण्डी (हि0 प्र0)।

**समक्ष मेघना गोस्वामी, तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभडोल,
जिला मण्डी (हि0 प्र0)**

तारीख पेशी : 30-08-2021

श्री राजू पुत्र श्री चेतु उपनाम चेत राम, निवासी गांव अंतोला, डाकघर कोलंग, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

विषय:— राजस्व रिकार्ड में नाम दुरुस्ती करने बारे।

श्री राजू पुत्र श्री चेतु उपनाम चेत राम, निवासी गांव अंतोला, डाकघर कोलंग, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) ने शपथ पत्र सहित आवेदन किया है कि प्रार्थी का वास्तविक नाम राजू है। परन्तु

राजस्व अभिलेख महाल कोलंग में प्रार्थी का नाम राजमल दर्ज हो चुका है। जो कि गलत दर्ज कागजात माल है। अब प्रार्थी ने अपना नाम राजमल उपनाम राजू दुरुस्ती दर्ज करने बारे निवेदन किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को राजस्व अभिलेख महाल कोलंग में राजमल के स्थान पर राजमल उपनाम राजू दुरुस्त करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 30-08-2021 को 10.00 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 26-07-2021 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
लडभडोल, जिला मण्डी (हि0 प्र0)।

समक्ष मेघना गोस्वामी, तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभडोल,
जिला मण्डी (हि0 प्र0)

तारीख पेशी : 30-08-2021

श्री दिनेश चौहान पुत्र श्री प्रकाश चन्द पुत्र श्री पलस राम, निवासी गांव व डाकघर खदर, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

विषय:— राजस्व रिकार्ड में नाम दुरुस्ती करने बारे।

श्री दिनेश चौहान पुत्र श्री प्रकाश चन्द पुत्र श्री पलस राम, निवासी गांव व डाकघर खदर, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) ने शपथ पत्र सहित आवेदन किया है कि प्रार्थी का वास्तविक नाम दिनेश चौहान है। परन्तु राजस्व अभिलेख महाल खदर में प्रार्थी का नाम दिनेश कुमार दर्ज हो चुका है। जो कि गलत दर्ज कागजात माल है। अब प्रार्थी ने अपना नाम दिनेश चौहान दुरुस्ती दर्ज करने बारे निवेदन किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को राजस्व अभिलेख महाल खदर में दिनेश कुमार के स्थान पर दिनेश चौहान दुरुस्त करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 30-08-2021 को 10.00 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 26-07-2021 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
लडभडोल, जिला मण्डी (हि0 प्र0)।

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता (द्वितीय वर्ग) हरोली, जिला ऊना, हि0प्र0

श्री सरवन सिंह पुत्र चरन दास, वासी बढेड़ा, तहसील हरोली, जिला ऊना (हि0प्र0) . . वादी ।

बनाम

आम जनता . . प्रतिवादीगण ।

दरखास्त बमुराद दुरुस्ती नाम राजस्व अभिलेख महाल बढेड़ा, जमाबन्दी साल 2014-15, तहसील हरोली, जिला ऊना (हि0प्र0) ।

श्री सरवन सिंह पुत्र चरन दास, वासी बढेड़ा, तहसील हरोली, जिला ऊना (हि0प्र0) ने इस न्यायालय में आवेदन पत्र दुरुस्ती नाम प्रस्तुत किया है कि राजस्व रिकार्ड में प्रार्थी का नाम गलत दर्ज किया गया है। अतः प्रार्थी सरवन कुमार पुत्र चरन दास की बजाये सरवन सिंह पुत्र चरन दास सही दर्ज किया जावे।

अतः इस अखबार/मुश्री मुनादी के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को नाम दुरुस्ती बारे कोई आपत्ति हो तो वह अपना उजर लिखित या मौखिक तौर पर इस न्यायालय में निर्धारित तारीख पेशी से पूर्व या तारीख पेशी दिनांक 24-08-2021 को प्रस्तुत कर सकता है। निर्धारित तारीख पेशी तक उजर/एतराज प्राप्त न होने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती बारे आदेश पारित कर दिये जाएंगे। निर्धारित तारीख पेशी के उपरान्त कोई भी उजर काबिले समायत न होगा व न्यायालय द्वारा एकतरफा कार्यवाही अमल में लाई जाकर इस सन्दर्भ में फैसला सुना दिया जाएगा।

आज दिनांक 24-07-2021 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता, द्वितीय वर्ग,
हरोली, जिला ऊना, हि0प्र0।

**In the Court of Sh. Prikshit Kumar, Marriage Officer-cum-Executive Magistrate,
Sub-Tehsil Gagret at Kaloh, District Una, Himachal Pradesh**

In the matter of :

1. Shri Rajesh Kumar s/o Shri Satish Kumar, r/o Village Gagret, Sub-Tehsil Gagret at Kaloh, District Una, Himachal Pradesh.
2. Sanjna Devi d/o Sh. Kartar Chand, r/o Village Amloh, Tehsil Dehra, District Kangra (H.P.) . . Applicants.

Versus

General Public

*Subject .—*Notice for Registration of Marriage.

Sh. Rajesh Kumar and Sanjna Devi have filed an application u/s 8(4) of Marriage Act, 1996 alongwith affidavits and supporting documents in the court of undersigned, stating therein that they have solemnized their marriage on 07-12-2020 as per the Hindu ritual and customs. Therefore, the general public is hereby informed through this notice that if any person having any objection

regarding this marriage may file his/her objection personally or in writing before this court on or before 06-09-2021. In case no objection is received by 06-09-2021, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 03-08-2021.

Seal.

Sd/-
Marriage Officer-cum-Executive Magistrate,
Sub-Tehsil Gagret at Kaloh ,
District Una (H.P.).

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Bangana, District Una,
Himachal Pradesh**

In the matter of :

1. Sh. Pankaj Rana s/o Sh. Ranjit Singh, r/o Village Narghota , P.O. Chapproh, Tehsil Bangana, District Una (H.P.).
2. Pooja d/o Sh. Balkishan, r/o Ward No. 23, Ram Shala Mohala, Tehsil & District Shamli (U.P.) . . Applicants.

Versus

General Public

Subject.—Application for the registration of Marriage under section 15 of the Special Marriage Act, 1954 (H.P.).

Sh. Pankaj Rana s/o Sh. Ranjit Singh, r/o Village Narghota , P.O. Chapproh, Tehsil Bangana, District Una (H.P.) and Pooja d/o Sh. Balkishan, r/o Ward No. 23, Ram Shala Mohala, Tehsil & District Shamli (U.P.) at present w/o Sh. Pankaj Rana s/o Sh. Ranjit Singh, r/o Village Narghota , P.O. Chapproh, Tehsil Bangana, District Una (H.P.) have filed an application alongwith affidavits in the court of undersigned under section 15 of the Special Marriage Act, 1954 (H.P.) that they have solemnized their marriage on 09-07-2021 according to Hindu rites and customs at Mata Jamasni Devi Mandir, Sarian, Tehsil Bangana, District Una (H.P.) and they are living together as husband and wife since then. Hence, their marriage may be registered under section 15 of the Special Marriage Act, 1954 (H.P.). Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 03-09-2021 after that no objection will be entertained and marriage will be registered.

Issued today on 22nd July, 2021 under my hand and seal of the court.

Seal.

Sd/-
Marriage Officer-cum-Sub-Divisional Magistrate,
Bangana, District Una, Himachal Pradesh.

CHANGE OF NAME

I, Shiv Charan (Ex. Army No. 3974336-N, Rank Ex. Sep.) s/o Sh. Amin Chand, Village & Post Office Dhamandri, Tehsil Una, (H.P.) have Changed My Name to Shiv Charan Rana.

SHIV CHARAN ,
(Ex. Army No. 3974336-N, Rank Ex. Sep.),
s/o Sh. Amin Chand, V.P.O. Dhamandri,
Tehsil & Distt. Una, Himachal Pradesh.